

**IN THE COMMISSION OF INQUIRY INTO STOPPED TRC INVESTIGATIONS  
AND/OR PROSECUTIONS**

**INDEX:  
CALATA GROUP VOLUME  
BUNDLE 3: ANTON ACKERMANN**

<b>ITEM NR</b>	<b>BUNDLE DESCRIPTION</b>	<b>PAGE NO</b>
1.	Copy of the affidavit of <b>ANTON ROSSOUW ACKERMANN</b> dated 7 May 2015 filed in the matter of <i>Nkadimeng v National Director of Public Prosecutions and Others</i> , Gauteng Division of the High Court, Pretoria, Case No: 36554/2015	1 to 18
2.	Affidavit of <b>ANTON ROSSOUW ACKERMANN</b> dated 25 October 2025 in the Commission of Inquiry into stopped TRC investigations and/or prosecutions	19 to 30
3.	Letter dated 29 December 1988 from A Rajbansi to President PW Botha (including annexures)	31 to 40
4.	Article entitled "Basson prosecutor gets international honour", published 24 years ago	41 to 42
5.	Write-up of <b>ANTON ROSSOUW ACKERMANN</b> by Retha Meintjes	43 to 46
6.	Founding Affidavit of Thabo Mvuyelwa Mbeki filed before the Pretoria High Court in case no.: 5245/24	47 to 96
7.	Memorandum from ANDPP Adv Mpshe to Minister Mabandla, dated 24 January 2008	97 to 103

8.	Memorandum from DDPP Adv Macadam to ANDPP Adv Mpshe, dated 9 June 2008	104 to 105
9.	Extracts from MACADAM statement, linked on the TRC Inquiry website <a href="#">here</a>	106 to 146

IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

Case Number:

In the matter between:

THEMBISILE PHUMELELE NKADIMENG

Applicant

And

NATIONAL DIRECTOR OF  
PUBLIC PROSECUTIONS

First Respondent

THE NATIONAL COMMISSIONER OF THE  
SOUTH AFRICAN POLICE

Second Respondent

THE MINISTER OF JUSTICE AND CORRECTIONAL  
SERVICES

Third Respondent

THE NATIONAL MINISTER OF POLICE

Fourth Respondent

WILLEM HELM COETZEE

Fifth Respondent

ANTON PRETORIUS

Sixth Respondent

FREDERICK BARNARD MONG

Seventh Respondent

MSEBENZI TIMOTHY RADEBE

Eighth Respondent

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WILLEM SCHOON

Ninth Respondent

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**AFFIDAVIT**

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I, the undersigned

**ANTON ROSSOUW ACKERMANN**

state under oath as follows:

**INTRODUCTION**

1. I am a senior counsel, a former *Special Director of Public Prosecutions* in the Office of the National Director of Public Prosecutions (the first respondent in this matter, hereinafter referred to as the "first respondent" or the "NDPP"). I am currently retired.
2. In terms of section 13(1)(c) of the *National Prosecuting Act No. 32 of 1998* ("the Act") I was appointed by President T M Mbeki, under a *Presidential Proclamation* dated 24 March 2003, to head the *Priority Crimes Litigation Unit* ("PCLU"). A copy of this proclamation is annexed to the founding affidavit marked "TN28". I served as head of the PCLU between 2003 and 31 March 2013. I retired from the *National Prosecuting Authority* on 31 March 2013.

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3. Save where appears from the context, the facts contained in this affidavit are within my own personal knowledge and are to the best of my knowledge and belief both true and correct. As I have not studied all the relevant official documentation I stand to be corrected on certain details, such as dates.
4. I depose to this affidavit at the request of the applicant's legal representatives and in order to ensure that all the relevant facts are placed before this Court.

#### EXPERIENCE

5. I have worked as a prosecutor for more than 40 years. I have prosecuted several high profile cases in South Africa. I set out hereunder an outline of my professional career:
  - 5.1. Joined the Department of Justice in 1970.
  - 5.2. Graduated from the University of Potchefstroom with the degrees of B Juris and LLB in 1975.
  - 5.3. Admitted as an advocate in 1976.
  - 5.4. Served with the office of the Attorney-General in Pietermaritzburg between 1977 and 1989.
  - 5.5. Appointed Deputy Attorney General: Transvaal in 1989 and served in this post until 2003.

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BACKGROUND

9. If my memory serves me correctly, in 1998 the investigation dockets held by the Unit headed up by Transvaal Attorney General Dr. Jan D'Oliveira Unit were transferred to the National Prosecuting Authority ("NPA"). In terms of a directive issued in 1999 by the then National Director of Public Prosecutions ("NDPP"), the TRC related cases were transferred from the then Directorate of Special Operations ("DSO"), and from the various offices of the Directors of Public Prosecutions ("DPP") and the South African Police Service ("SAPS") to the office of the NDPP.

10. In 1999, a working group called the Human Rights Investigative Unit ("HRIU") was established within the NPA by the then National Director of Public Prosecutions ("NDPP"), Bulelani Ngcuka, on the initiative of the then Minister of Justice, Dullah Omar. The head of the Unit was Vincent Saldanha. It was mandated to review, investigate and prosecute cases in which perpetrators had been denied amnesty or in which perpetrators had not applied for amnesty. The HRIU continued operations until 2000, however it instituted no prosecutions.

11. In 2000, the dockets held by the HRIU were transferred to the Directorate of

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*Special Operations ("DSO"), more widely known as the Scorpions. An entity was established within the DSO to handle the TRC cases known as the Special National Projects Unit ("SNPU"), which was headed by Advocate Chris Macadam. The SNPU operated until 2003, but it too instituted no prosecutions.*

12. *On 24 March 2003 I was appointed to head up the newly established PCLU. The mandate of the PCLU is to manage and direct investigations and prosecutions in relation to various priority crimes, including serious national and international crimes, such as terrorism, sabotage, high treason, sedition, foreign military crimes and other priority crimes as determined by the NDPP.*
13. *On 15 April 2003, the TRC Report was tabled before Parliament by President Thabo Mbeki who directed that the NDPP must institute prosecutions where appropriate.*
14. *In May 2003 the then NDPP, Advocate Bulelani Ngcuka, made a determination that all TRC-related cases, in which amnesty had been denied or not applied for, were 'priority crimes' in terms of the proclamation. This resulted in more than 400 investigation dockets being transferred to my office. Advocate Chris Macadam, attached to my office, and I conducted the initial audit and identified 21 cases as worthy of further investigation.*
15. *During 2004 and 2005 the PCLU identified 16 cases for further investigation and*

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possible prosecution. The Simelane case was one of the cases earmarked for further investigation.

16. In relation to post-TRC prosecutions conducted by the PCLU, only the following cases have been instituted: S v Terre'blanche, S v Blani and S v Nieuwoudt & 2 Others.

16.1. In 2003, the late Eugene Terre' Blanche, former leader of the Afrikaner Weerstandsbeweging, (Afr)kaner Resistance Movement), who had been charged with various acts of terrorism during the 1990s, entered into a 'plea agreement' with the PCLU in terms of 105A of the Criminal Procedure Act. Terre' Blanche pleaded guilty to five counts of terrorism in contravention of the Internal Security Act and was sentenced to six years of imprisonment, which was wholly suspended. He had not applied for amnesty. This was the first TRC related case taken up by the PCLU.

16.2. During 2004 I came across the docket of Buyile Roni Blani, an ANC member, who was implicated in the mob killing of two people in 1985. Blani was charged with the killings in 1985 but managed to flee to Angola where he remained in exile until his return in 1992. He did not apply for amnesty. Since the evidence was clear and compelling and the case was already fully investigated I instructed that it should proceed. Blani was arrested and granted bail. On 25 April 2005, following a plea and sentence agreement, he was convicted on all charges and sentenced to five years imprisonment,

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four of which were suspended for five years.

16.3. In 2004, Gideon Nieuwoudt (who died in 2005), Johannes Martin van Zyl, and Johannes Koole were each charged with abduction, assault and murder of the 3 anti-apartheid activists, known as the PEBCO 3.

16.3.1. This was the first case that the PCLU brought in respect of perpetrators who had been denied amnesty. Their applications for amnesty had been denied in 1999.

16.3.2. Shortly after their bail hearings in 2004, Nieuwoudt and van Zyl applied to court to review the decisions to refuse them amnesty. The review was delayed by some 5 years because of the failure of the Department of Justice to file its answering papers. Eventually in 2009 the High Court ruled that an Amnesty Committee be convened to rehear the application of van Zyl.

16.3.3. The case against the three former security policemen was provisionally withdrawn in 2009. The NPA submitted to the High Court that the prosecution could not proceed while there was an amnesty proceeding pending. The Department of Justice filed an affidavit recommending the provisional withdrawal of the criminal charges against the surviving Johannes Koole, and Martin Van Zyl,

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who was seriously ill. The Amnesty Committee was never reconvened and the case against Van Zyl and Koole was never reinstated.

17. On the morning of 11 November 2004 the police was on the verge of effecting the arrests of three former officers of the Security Police on charges which related to the attempted murder of the Rev. Frank Chikane, the former head of the South African Council of Churches in 1989 by poisoning. The three former policemen were former Major-General Christoffel Smith, Colonels Gert Otto and Johannes 'Manie' van Staden. None had applied for amnesty for this crime.

17.1. On the same morning I received a phone call from Jan Wagenaar, the attorney for the abovenamed suspects. He told me that I would receive a phone call from the Ministry of Justice and I would be advised that the case against his clients must be placed on hold.

17.2. Shortly thereafter I received a phone call from an official in the then Ministry of Justice. I was informed by the said official that a decision had been taken that the Chikane matter should be put on hold pending the development of guidelines to deal with the TRC cases. I told him that that only the NDPP could give me such an instruction.

17.3. A few minutes later the NDPP contacted me and instructed me not to

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proceed with the arrests. I believe that it can be safely assumed that the NDPP was instructed at a political level to suspend these cases.

18. All TRC related investigations and prosecutions were accordingly placed on hold pending the formulation of guidelines in relation to the so-called political cases of the past. These were to be incorporated as amendments to the Prosecution Policy (hereinafter referred to as "the amendments" or "the guidelines"). I was instructed by the NDPP to stop working on all the TRC cases.
19. At least two legal opinions were prepared by my office regarding the constitutionality of the proposed amendments to the Prosecution Policy and submitted to the NDPP. The opinions pointed out that the amendments amounted to a rerun of the TRC's amnesty process and would not survive constitutional scrutiny. At a number of meetings I voiced my opposition to the proposed amendments. I recall that I had numerous consultations with Gerard Nel, the legal adviser to the NDPP, who was playing a leading role in formulating the proposed amendments.
20. This suspension of prosecutions amounted to an effective moratorium on the pursuit of TRC related cases.
21. During 2005 I met with representatives of the Simelane family. They raised a number of requests, including that the PCLU should:

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- 21.1. Investigate with a view to prosecuting Detective Inspector Msebenzi Timothy Radebe, who played a role in the abduction and the torture of Simelane both at Norwood and Northham and who did not apply for amnesty.
- 21.2. Investigate with a view to bringing defeating the ends of justice charges against Coetzee and Pretorius for intimidating the late Sergeant Lengene into making a false statement and for attempting to coach Norman Mkhonza into making a false statement.
- 21.3. Follow up on the results of the examination of the micro cassette tape containing the conversation between Scotch, Pretorius and Coetzee; and follow up on the request for lists of unidentified bodies received by police mortuaries between 1980 and 1996.
- 21.4. Investigate the circumstances of the deaths of two key witnesses, Sergeant Mathibe and Sergeant Lengene.
22. I was not able to assist with these requests as at that stage my hands were tied with the effective moratorium in place pending the issuing of the new Prosecution Policy.
23. In December 2005 the amendments to the Prosecution Policy were issued. These

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amendments permitted the granting of effective indemnities to perpetrators in TRC related cases who did not make use of the erstwhile amnesty process.

- 23.1. The NDPP was authorised to apply the same amnesty criteria used by the TRC but could also decline to prosecute on other open-ended criteria such as the perpetrator's demonstration of remorse, level of indoctrination sustained, attitude towards reconciliation and/ or his willingness to abide by the Constitution.
  - 23.2. These criteria would entitle the NDPP to decline to prosecute, even where there was adequate evidence to justify a prosecution in a serious case such as kidnapping or murder.
  - 23.3. The PCLU was expected to act under the advisement of a multi-departmental committee which included the National Intelligence Agency and the South African Police Service. The entire process would be carried out behind closed doors.
24. As mentioned above, I was opposed to the amendments to the Prosecution Policy as I felt they violated the constitutional rights of the complainants and constituted unwarranted interference in the prosecutorial independence of the NPA. I again expressed my dissatisfaction with various officials, including the NDPP. In my view the amendments or guidelines were aimed solely at accommodating

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perpetrators and providing them with another avenue to escape justice.

25. Once the guidelines were issued in December 2005 I wanted to proceed with the 5 cases I had identified with good prosecution prospects and the 11 cases which required further investigation. These were identified as "*major priorities*" for the PCLU for the 2006 – 07 period. Moreover a press statement issued by the NDPP during 2006 led to additional requests from victims for further investigations in their cases. However, with the exception of the Chikane matter, during the course of 2006 and 2007, the PCLU was unable to pursue any of the TRC cases for various reasons. These included a lack of investigative capacity as well as difficulties encountered in convening the multi-departmental committee that was meant to advise the PCLU on what cases to pursue.
26. In March 2006 I again met with the representatives of the Simelane family. I had to advise them that I was unable to take the investigation forward as there were no investigators attached to the PCLU. Requests I had made to the SAPS and the DSO for competent and experienced investigators, in this matter and the other TRC cases, had fallen on deaf ears. The said representatives also supplied me with a legal opinion which recommended that those involved in the torture of Ms. Simelane be charged with torture, as a crime against humanity or war crime, in terms of customary international law, since such crimes never prescribe.
27. As a result of this meeting the said representatives wrote to the then NDPP, Adv.

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Pikoli, requesting him to reach out to the SAPS and the DSO in order to secure competent investigators for the PCLU as a matter of urgency. These efforts were not successful. In subsequent interactions I advised the said representatives to pursue an inquest rather than a prosecution. I did so because I realized that there was no prospect of a serious investigation or prosecution taking place in the political context that prevailed at the time.

28. During 2006 the then NDPP, Adv Pikoli, appointed a team to review the representations made by the suspects in the Chikane matter who were seeking an indemnity under the amendments to the Prosecution Policy. The team was chaired by Dr. T. Pretorius. I refused to participate in this review as I regarded the said amendments as unconstitutional. After several months the review team concluded that no indemnities should be granted as the full truth had not been disclosed.
29. During 2007 the PCLU eventually returned to the Chikane attempted murder case and in June 2007 the three suspects, together with Adriaan Vlok, former Minister of Police, and Johan van der Merwe, former Commissioner of Police were charged with one count of attempted murder, alternatively conspiracy to murder Chikane. A plea and sentence agreement was agreed upon which the Court confirmed during August 2007. In terms of the plea and sentence agreement the accused all pleaded guilty to the charge of attempted murder. Vlok and van der Merwe were sentenced to ten years imprisonment, wholly suspended for five

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years on the condition that they are not convicted of a similar crime. Otto, Smith and van Staden were sentenced to five years imprisonment, wholly suspended for five years on the condition that that they are not convicted of a similar crime.

30. This case ought to have opened the door to the prosecution of General Basie Smit, who succeeded Van der Merwe as Commander of the Security Branch in October 1988, as well as other senior officers of the both the SAPS and the former South African Defence Force (SADF). However no further cases were pursued which can be attributed to political interference in the work of the NPA.
31. In 2008 the High Court in Pretoria (*Nkadimeng & Others v The National Director of Public Prosecutions & Others*, TPD case no 32709/07) struck down the amendments to the Prosecution Policy as unconstitutional. The Court found that the amendments were a "copy-cat" of the TRC amnesty process; that many of the criteria were not relevant in deciding whether or not to prosecute; and that they were moreover "a recipe for conflict and absurdity".

#### POLITICAL INTERFERENCE

32. The first act of political interference which effectively stopped the work of the PCLU into the TRC cases was the suspension of such cases during 2004 pending the issuing of the new prosecution guidelines. This introduced the effective moratorium I referred to above.

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33. Once the guidelines had been issued, and the multi-departmental working committee (subsequently referred to as the Task Team) was established in 2006, it became clear that the SAPS and NIA representatives believed they were part of the prosecutorial decision making process.

33.1. On 6 December 2006, the PCLU received a letter from the head of the SAPS Legal Support section, Major General P C Jacobs, representing the view of the National Commissioner, which indicated that before any prosecutorial decision was made in respect of the TRC cases, the Task Team must submit a final recommendation to a Committee of Directors General in respect of each case, which in turn must advise the NDPP in respect of who to prosecute or not.

33.2. In respect of the interactions between the NDPP and other government departments and officials, I refer to the affidavit of Adv. Pikoli, which is filed evenly herewith.

34. The NDPP objected to this approach on the basis that it would constitute an unwarranted interference in the work of the NPA. The NDPP would be obliged to wait for the process to be completed and to receive a recommendation before he could make a decision, even where there were reasonable prospects of a successful prosecution.

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35. During 2007 an office note, purportedly written by me in 2006, was circulated in certain government circles in which it was reflected that I was investigating criminal charges against 37 ANC leaders, including the then President, Thabo Mbeki. This office note was a fabrication. I had written this office note in 2003 but the date of the note had been adjusted to give the false impression that it had been compiled in 2006. I believe it was aimed at discrediting me and ultimately stopping the investigations into the TRC cases. I am firmly of the view that the then National Commissioner, the late Mr. J Selebi, played a conspicuous role in claiming that I was pursuing the said leaders.
36. During this time I was informed by Adv. Pikoli that the then Director-General of the Department of Justice, Menze Simelane, had approached him and raised concerns about my handling of the prosecution of the TRC cases. He asked the NDPP to relieve me of my duties in this regard, which the NDPP declined to do. The NDPP advised me that senior people in the government wanted to fire me because I was still pursuing the TRC cases.
37. Adv. Vusi Pikoli was suspended from his duties as NDPP in September 2007. Shortly after his suspension I was summoned to the office of Adv. Mokotedi Mpshe, then acting NDPP. Adv. Mpshe advised me that I was relieved of my duties in relation to the TRC cases with immediate effect. I have no doubt that Adv. Mpshe received a political instruction to remove me from these cases. I

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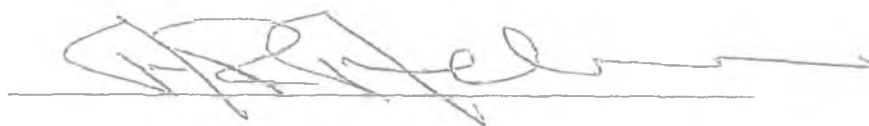
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advised Adv. Mpshe that removing me from the TRC cases would not make the cases go away.

38. At the time, I believed that if I was being removed from the TRC cases, then nobody else would be permitted to pursue the cases boldly and fearlessly. It is no coincidence that there has not been a single further prosecution since I was relieved of my duties in this regard.

#### CONCLUSION

39. There is little doubt in my mind that the investigation and prosecution of the TRC cases have been effectively stopped by machinations that took place at a level above that of the NPA. Such interference serves to explain why the Simelane matter, as well the bulk of the TRC cases, have not been seriously investigated or prosecuted.
40. In so doing the rule of law has been undermined and a deep injustice has been committed against the family of the late Nokuthula Simelane, as well as the families of other victims of apartheid era crimes.


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I hereby certify that the deponent has acknowledged that he knows and understands the contents of this affidavit, which was signed and sworn to before me, Commissioner of Oaths, at PRETORIA on this the 07<sup>th</sup> day of MAY 2015 the regulations contained in Government Notice No R1258 of 21 July 1972, as amended, and Government Notice No R1648 of 19 August 1977, as amended, having been complied with.

  
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 COMMISSIONER OF OATHS

I certify that the DEPONENT has acknowledged that he/she knows and understands the contents of his affidavit, that he/she does not have an objection to taking the oath, and that he/she considers it to be binding on his/herself conscience, and which was sworn to and signed before me and that the administering oath complied with the regulations contained in Government Gazette No. R 1258 of 21 July 1972, as amended

   
 SIGNATURE FULL NAMES  
 Commissioner of Oaths  
 Date: 07/05/2015 Office: Republic of South Africa  
 Place: WOODSTOCK District: WOODSTOCK POST OFFICE

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**IN THE COMMISSION OF INQUIRY INTO STOPPED TRC INVESTIGATIONS  
AND/OR PROSECUTIONS**

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**AFFIDAVIT OF ANTON ROSSOUW ACKERMANN**

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I, the undersigned

**ANTON ROSSOUW ACKERMANN**

state under oath as follows:

**Introduction**

1. I am an adult male, a senior counsel, and a former Special Director of Public Prosecutions in the Office of the National Director of Public Prosecutions ("**NDPP**"). I am currently retired and residing in the Western Cape.
2. In terms of section 13(1)(c) of the National Prosecuting Act No. 32 of 1998 ("**the Act**"), I was appointed by President TM Mbeki, under a Presidential Proclamation dated 24 March 2003, to head the Priority Crimes Litigation Unit ("**PCLU**"), located at the head office of the National Prosecuting Authority ("**NPA**"). I served as head of the PCLU from 2003 to 2013, when I retired.
3. Save where appears from the context, the facts contained in this affidavit are within my own personal knowledge and are to the best of my knowledge and belief both true and correct.



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4. I depose to this affidavit to assist the Judicial Commission of Inquiry into stopped TRC Investigations and/or Prosecutions ("**the Commission**") to address paragraphs 1 to 1.3.2 of the terms of reference of the Commission.

#### **Confirmation of affidavits**

5. I confirm the contents of my affidavit dated 7 May 2015 which was attached as a supporting affidavit in the matter of *Nkadimeng v NDPP and Others* (Gauteng Division, Case No. 36554/2015). I will rely on the full contents of this affidavit to address the aforesaid paragraphs of the terms of reference. A copy of this affidavit was supplied by Webber Wentzel attorneys<sup>1</sup> to the Commission on 10 October 2025 in divider (bundle) 3 at paginated pages 890 - 907.
6. I also confirm the contents of the founding affidavit of Lukhanyo Calata dated 17 January 2025 filed in *Calata & Others v Government of South Africa & Others* (Gauteng Division, Case No. 2025-005245), insofar as it pertains to me ("**the Calata affidavit**"). A certified copy of this affidavit was supplied by Webber Wentzel attorneys to the Commission on 10 October 2025 in bundle 1 at paginated pages 1 - 842.
- 6.1 In respect of paragraph 33.1 of my aforesaid affidavit and paragraph 234 of the Calata affidavit I point out that the letter from the SAPS Legal Support Section Maj Gen P C Jacobs was probably addressed to the NDPP not the Priority Crimes Litigation Unit ("**PCLU**").
- 6.2 I also point out that in respect of paragraph 216 and the first line of paragraph 217 of the Calata affidavit the Senior Superintendent Britz

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<sup>1</sup> Attorneys for the 22 families and the Foundation for Human Rights.

  
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referred to therein is "Hennie Britz" and not "Karel Johannes 'Suiker' Britz".

### **Reliance on Macadam affidavit and annexes**

7. I align myself with the contents of the affidavit of Raymond Christopher Macadam ("**Macadam**") filed in the Joao Rodrigues stay of prosecution case in *Rodrigues v NDPP & Others* (Case No. 76755/18, Gauteng Division). I will rely on the contents of this affidavit, together with the documents attached to that affidavit, to address the aforesaid terms of reference. A copy of this affidavit was supplied by Webber Wentzel attorneys to the Commission on 10 October 2025 in bundle 1 at paginated pages 276 - 359.

### **Provision of new documents**

8. I attach to this affidavit two documents that are not currently part of the record provided by Webber Wenzel attorneys on 10 October 2025.
  - 8.1 A letter dated 16 March 2004 I addressed to Raymond Lalla, the Divisional Commissioner of SAPS Crime Intelligence ("**Lalla**"), annexed hereto marked "A".
  - 8.2 An internal memorandum dated 27 September 2007 I addressed to DSO Head, Adv Leonard McCarthy ("**McCarthy**") titled "Project Gnome".
9. In the letter to Lalla, I expressed my displeasure at him secretly videotaping a confidential meeting I held with him on 25 August 2003, in respect of the TRC cases. In that meeting I voiced my frustration and disgust with the refusal of the DSO to take on the TRC cases. That videotape was then handed over to

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NDPP Ngcuka, Deputy NDPP Ramaite and DSO Head McCarthy. I was then called into a meeting with them and confronted with the video recording.

10. The internal memorandum sent to McCarthy on 27 September 2007 dealt with the investigation into the fabricated note I referred to in my 2015 affidavit from paragraph 35 (bundle 1, paginated page 905).<sup>2</sup> In this memorandum I explained to McCarthy why the note was definitely forged.

### **Request to locate documents / evidence**

11. I respectfully request the Commission to secure or subpoena the following documents and items of evidence:

11.1 From the Department and Ministry of Justice:

11.1.1 Minutes and records of the following bodies:

11.1.1.1 Special Cabinet Committee on the Post TRC cases / Subcommittee of the Justice, Crime Prevention and Security (JCPS) Cabinet Committee on Post TRC matters.

11.1.1.2 Committee of Directors General, in respect of their deliberations on the TRC cases.

11.1.1.3 The Amnesty Task Team.

11.1.1.4 The Inter-departmental Task Team on the TRC cases.

11.2 From the NPA:

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<sup>2</sup> See also paragraph 260 of the Calata affidavit.



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- 11.2.1 A copy of the fabricated note referred to in paragraph 10 above.
- 11.2.2 Relevant documents, including reports and correspondence, from the person commissioned to investigate the hacking of my computer in respect of the fabricated note.
- 11.2.3 Report on the costs expended for the services of the investigator.
- 11.3 From the SAPS:
- 11.3.1 The original fabricated note that was allegedly in the possession of the DSO.
- 11.3.2 The videotape made by Raymond Lalla of the meeting with me, Torie Pretorius and Chris Macadam on 25 August 2003.

#### **Allegations of Imtiaz Cajee**

12. I was sent an undated Notice in terms of Rule 3.3 with various allegations made by Imtiaz Cajee arising from his affidavit dated 30 September 2025.

#### Paragraph 47: No concerted effort

13. In respect of Cajee's allegation in paragraph 47, I point out that I was only appointed as head of the PCLU on 24 March 2003 and the then NDPP declared the TRC cases to be priority crimes in May 2023. I was not personally involved in the Ahmed Timol case, which was being handled by Adv Chris Macadam, but it was one of the TRC cases falling within our mandate.
14. Extensive efforts to secure investigators for the TRC cases were made from early May 2003 shortly after their designation as priority crimes, as set out in

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the Macadam and Calata affidavits. As stated in the aforesaid affidavits both the Directorate for Special Investigations (“**DSO**” or “**Scorpions**”) and the South African Police (“**SAPS**”) declined to investigate the TRC cases.

15. This effectively blocked the investigation of the TRC cases for several years and severely undermined the prospects of justice in those cases, including the Timol case.
16. I deny that I placed the burden of investigating the Timol case onto Cajee, but I accept that in the absence of investigations by the DSO / SAPS, families, including the Timol family, felt obliged to carry out their own investigations.

Paragraphs 195 - 6: Failure to create mechanism and to approach the President

Paragraph 207: Allegation of no interference

Paragraphs 208-9: Alleged failure to resist

17. I agree that government failed to take steps to investigate the TRC cases. I also agree that the President should have been approached.
18. As I was not the NDPP it was not within my prerogative or power to contact the President.
19. However, after DSO Special Director Adv MG ‘Geoph’ Ledwaba (“**Ledwaba**”) refused to sign the section 28(1)(b)<sup>3</sup> notices in respect of the TRC cases, I recall that I approached either Adv Leonard McCarthy, then head of the DSO, or Adv Bulelani Ngcuka, then NDPP, or Adv Silas Ramaite, then Deputy NDPP to expedite the signing of the said notices.

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<sup>3</sup> Inquiries by Investigating Director in terms of the National Prosecuting Act 32 of 1998.

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20. Regrettably, the said notices were not authorised, notwithstanding my efforts. I did not have the power to take the matter further than that.
21. Within the NPA I raised my concern about the obstruction of the TRC cases. I refused to take part in the amendments to the Prosecution Policy, which I regarded as unconstitutional.
22. On 3 May 2007, NDPP Pikoli and I appeared before the Justice Portfolio Committee in Parliament. I advised that the lack of progress in the TRC cases was not the fault of the PCLU. Pikoli advised the Commission that "*there was politically sensitive issue*", and that "*whenever there was an attempt to charge the former police there was a political intervention and that effectively the NPA was being held to ransom by the former generals.*"<sup>4</sup>
23. From around 2006 I advised families and lawyers that we were struggling to get investigators for the TRC cases and suggested they should pursue inquests rather than prosecutions.
24. I agree with the views of the Full Court in the Rodrigues matter that the NPA should have asserted its authority and independence and resisted the political interference.
25. Because of my opposition to the interference in the TRC cases I was relieved of my duties in respect of these cases in September 2007, and it is also one of the reasons why Pikoli was suspended as NDPP.
26. To the extent that Cajee alleges that there was no interference in the work of prosecutors in the TRC cases, I deny such a claim.

---

<sup>4</sup> See para 250 of the Calata affidavit.

A handwritten signature in black ink, appearing to be 'S.M.', is located in the bottom right corner of the page. The signature is stylized and somewhat illegible.

- 27. To the extent that Cajee describes me as an old order prosecutor acting in the interests of the former regime, I point out that I always prosecuted without fear or prejudice, regardless of the nature of the case. I was the lead prosecutor in the prosecution of former apartheid security operatives: Eugene de Kock, Wouter Basson and Ferdi Barnard, amongst others.
- 28. In this regard I annex hereto marked "C" a note I received from George Bizos SC in relation to my role at the inquest of Jabu Vilakazi, in which he also appeared.



**ANTON ROSSOUW ACKERMANN**

The Deponent has acknowledged that the Deponent knows and understands the contents of this affidavit, which was signed and sworn to or solemnly affirmed before me at Hermanus on 25 October 2025, the regulations contained in Government Notice No. R1258 of 21 July 1972, as amended, and Government Notice No. R1648 of 19 August 1977, as amended, having been complied with.



**COMMISSIONER OF OATHS**

Full names: Siphindile Mkhaw Khuy  
 Business address: 61 Main Road  
 Designation: Warrant officer  
 Capacity:



Copy

P O Box 10036  
MORELETA PLAZA  
0167  
16 March 2004

Commissioner Lalla  
The Divisional Commissioner  
Crime Intelligence  
Private Bag X302  
PRETORIA  
0001

Dear Commissioner Lalla,

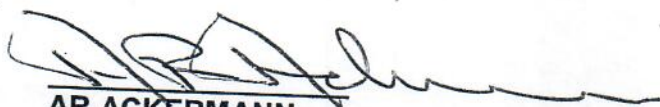
With reference to your clandestine audio and visual monitoring of our confidential discussion on 25 August 2003, I wish to convey my utmost disgust at such underhanded conduct.

It is accepted practice amongst professionals, when it is desirable that a meeting be recorded that it be done openly.

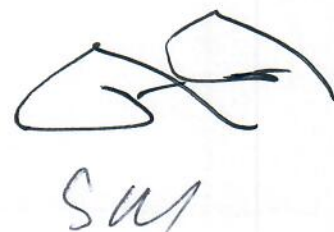
The purpose of my meeting with you was to further the interest of justice. You came highly recommended to me by Macadam and Pretorius as a sincere and trustful colleague. Obviously they made a grave error of judgement.

Unfortunately because of this experience I am left with the firm impression that the only difference between your division and the old security regime is the change in surnames. (See the attached documents indicating previous attempts "to get rid of me"). Only time will tell if you have succeeded and whether the end justify the means.

In closing I wish to echo the answer by Oscar Wilde during his cross-examination: "Don't you have any decency?"



**AR ACKERMANN**  
**HEAD: PCLU**



SW

/Z56 forms

Office of the Head  
Priority Crimes Litigation Unit  
VGM Building  
PRETORIA

P. O. Box 752,  
PRETORIA  
0001

VGM Building  
Hartley St.  
Weavind Park  
0001  
Pretoria  
South Africa

---

---

## INTERNAL MEMORANDUM

---

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**TO :** ADV LEONARD McCARTHY  
DIRECTORATE OF SPECIAL OPERATIONS

**FROM :** ADV AR ACKERMANN  
PRIORITY CRIMES LITIGATION UNIT

**DATE :** 27 SEPTEMBER 2007

**SUBJECT :** PROJECT GNOME

---

Dear Leonard

1. I shall be brief.
2. I am adamant and 100% sure that the figure "6" as reflected in the handwriting expert's document, FDC 0095/07 (Annexure "E") is not in my handwriting.
3. I am of the view that you do not need a handwriting expert to establish that fact.
4. Furthermore, it is important to note that the handwriting expert made no such finding and merely remarked:  
  
"...with no alteration to the last figure '6'."
5. Within minutes after I had received the said memorandum from Commissioner Jacobs, I phoned him and informed him that the memorandum was forged and requested him to furnish me with the original. To date, I have not had sight of the original.
6. It is incomprehensible that somebody will post-date by three

Tel: (012) 845 6474  
Cell: 082 495 4599



SWA

years the year on a document. To pre-date the year during the months of January or February is quite common.

7. I have never, on any occasion, written to Dr Ramaite in Afrikaans.
8. The crucial question is whether any person in SAPS had a motive or reason to produce a document, emanating from the NPA, to the effect that the NPA was still investigating ANC office bearers during 2006.
9. If no such motive exists, I must accept that the *gravamen* of the disputed document falls away.
10. Kindly find attached hereto a letter from the Minister to Adv Pikoli.
11. I am very interested to know which documents the National Commissioner "... produced to support his argument that indeed there is an investigation by the NPA on certain political office bearers."
12. If the disputed document is relied on by the National Commissioner to prove that there is indeed an investigation by the NPA on ANC office bearers, then this will contradict the explanation given by Commissioners de Beer and Jacobs to the effect that since 2003, SAPS were fully aware that the disputed document had been compiled in 2003 and that an incorrect date had been inserted on it.
13. I will not bore you with the numerous improbabilities which exist.
14. Adv Macadam stated in his report, addressed to you and others, that I had informed him on 25 August 2007 that the disputed report had been discussed between the NDPP and the National Commissioner. That is not correct. Macadam further stated that the NDPP had informed me that the disputed report had been shown to various Ministers. That is also not correct. The NDPP and I surmised that the disputed report had probably been the document shown to the Ministers in the light of the National Commissioner's assertion that he had written proof that I was still investigating the ANC leadership. The Minister's letter sheds more light on this matter.

Regards



**AR ACKERMANN**



SUN

# GEORGE BIZOS S.C.

Office Address:  
4th Floor, Elizabeth House  
18 Pritchard Street  
Johannesburg 2001  
Tel: (011) 836-9831  
Fax: (011) 834-4273

Postal Address:  
P O Box 9495, Johannesburg  
2000

Your Ref:

Our Ref: George Bizos/JK

14 January 1998

## TO WHOM IT MAY CONCERN:

During 1976 - 1977 I appeared at a formal inquest in the Magistrate's Court, Johannesburg on behalf of the family of Jabu Vilakazi who was killed by members of the South African Police. The prosecutor who led the evidence was Mr A R Ackermann now senior counsel in the office of the Attorney-General in Pretoria. It was contended by us on behalf of the family that members of the Brixton Murder and Robbery Unit arrested the late Vilakazi, took him for a so-called pointing out and then shot him in cold blood and that their story that they did so because he tried to escape was a fabrication. It was customary during that period for prosecutors to defend the police irrespective of the weight of evidence against them. To our surprise, Mr Ackermann's objectivity was demonstrated by submitting that the members of the Brixton Murder and Robbery Unit were criminally responsible for the death of the deceased. In my view, this was a breath of fresh air and gave one hope that despite the pressures that must have existed on a comparatively junior member of the profession, he courageously and correctly submitted what he believed to be in accordance with his oath of office. We were not alone in that belief. The Magistrate made a positive finding in accordance with Mr Ackermann's and our submissions. I have always singled him out as the outstanding exception amongst those who thought that protecting the police was more important than serving justice. Although we have lost touch, I am reliably informed that he has continued to behave in an objective and proper manner throughout his professional career. I am pleased to place on record what has been in my mind for so long.

*George Bizos*

*[Signature]*  
S W



Republic of South Africa  
Republiek van Suid-Afrika

31  
MINISTERS' COUNCIL OF THE HOUSE OF DELEGATES  
MINISTERSRAAD VAN DIE RAAD VAN AFGEVAARDIGDES

CHAIRMAN OF MINISTERS' COUNCIL  
VOORSITTER VAN MINISTERSRAAD

REFERENCIE  
VERWYSING

Private Bag X54330  
DURBAN  
4000

29 December 1988

PRIVATE AND CONFIDENTIAL

Mr P.W. Botha, D.M.S.  
The State President  
Private Bag X193  
CAPE TOWN  
8000

Dear Mr President

I have accepted your decision to terminate my services as a Minister of State, as I believe that you had acted on the Preliminary Report submitted to you by the Chairman of the James Commission of Inquiry. I did not want to complain to you while the Commission was hearing the evidence about the unfair manner in which my Party and I were being treated by both the Chairman and Advocate ANTON ACKERMANN who was the designated Officer and whose task was to lead the evidence.

In your press statement, when you appointed the Commission, you stated inter alia, the following :-

"For a considerable time now there have been allegations and counter allegations in the House of Delegates of irregularities amongst its Members. I entertained the hope that this matter would be solved by means of a debate". The main purpose for which you had appointed the James Commission of Inquiry, in my opinion, was to investigate bribery and corruption.

PAGE 2.../The

The following persons made the strongest call for the appointment of a Commission of Inquiry.

- A. MR PAT POOVALINGAM who stated in the House of Delegates that he will quote "chapter and verse" of evidence when a Commission of Inquiry is established. He stayed far away from the Commission.
- B. DR J.N. REDDY who also stayed far away from the Commission.
- C. MR M. RAJAB who only submitted an affidavit making wild unsubstantiated allegations which the Commission ignored.
- D. MR Y. MOOLLA submitted a memorandum to You on Education requesting the appointment of a Commission of Inquiry but failed to submit this memorandum to the Commission.

The Commission could not unearth anything about bribery and corruption. I am satisfied that I am a victim of the following :-

- A. A left - wing plot
- B. A right -wing plot
- C. A plot on the part of a small group who wants to grab political powers in the House of Delegates at all costs and which group manipulated the evidence against the James Commission of Inquiry.

I feel that it is my duty, in the interest of this country and my continued dedication to peaceful change, that my grievances be heard before MR JAMES submits to you his final report. My Party and I were subjected to humiliation and one sided investigation mainly on the part of Advocate ANTON ACKERMANN, where the whole conduct has to be investigated for the sake of justice and for the sake of the good name of "Commission of Inquiry" in this country.

Advocate ANTON ACKERMANN manipulated investigations and presented one sided evidence so that heroes were made of right and left wing elements from both within and outside the Administration.

I may add that the newly appointed Director-General, MR R.P. WRONSLEY played a significant role, being under the strong influence of MR I KATHRADA, the Minister of the Budget. When our Administration was established, we had the good fortune of being assisted by Director-General of the quality and the calibre of DR J. GILLILAND. We both realised that in the difficult years patience, tolerance and understanding was required. Prior to the establishment of the House of Delegates, we were able to steer the Administration along the correct course. We were aware of a strong force from both the left and right wingers that could hijack the Administration.

The Indian Administration is one that you could be proud of because we did not allow, with strong leadership, it to be taken over by leftist and rightist forces.

From February this year we were receiving the warning signals of the role of MR R.P. WRONSLEY, who was constantly seen in the company of the following persons :-

- A. MR I. KATHRADA - Minister of the Budget
- B. MR A.K. SINGH - Chief Executive Director of the Department of Education and Culture who does not hide his feelings that he is against the Tricameral System of Government.
- C. MR V.G. HUNT - A known right winger.

Advocate ANTON ACKERMANN, I am certain, came under the influence of the aforementioned persons and allowed the James Commission of Inquiry to be used as a forum where the system was subjected to humiliation.

The Commission allowed the following to give evidence on matters completely outside its terms of reference.

- A. Teacher's Association of South Africa whose President MR PAUL SAMUELS has just returned after meeting the ANC in Lusaka.
- B. A firm GOGA and Company - known activist of ANC who have close links with the CACHALIA Family

Advocate ANTON ACKERMANN used his powers to seize confidential documents from the Administration and handed them over to ANC activists, GOGA & COMPANY to be used against the Administration with the knowledge of JUSTICE JAMES.

Advocate ANTON ACKERMANN made heroes of another ANC activist, the SALAJEE Family of Lenasia about book orders. I had reminded MR JUSTICE JAMES in his chambers that Ministers and certain Officials had to take decisions in the interest in the security of the State and inspite of this he allowed the humiliation to continue. In this respect I have even requested a matter about MR A.K. SINGH to be heard in camera but my request was turned down.

MR JUSTICE JAMES was upset when I stated that certain Child Welfare Societies in the Indian Community were being used to fan the revolutionary flames in this country. JUSTICE JAMES'S conduct on this matter cannot be ignored. In another matter where I was forced to mention your directives about "NO NONSENSE IN EDUCATION", JUSTICE JAMES retorted in a fashion which can be regarded as sarcasm or mockery.

Both JUSTICE JAMES and ANTON ACKERMANN championed the course of the Chief Executive Director of Education and Culture, MR A.K. SINGH, who in my opinion is a leftist and will steer the Education Administration towards the left wing forces. MR WRONSLEY appears to be hypnotized by MR A.K. SINGH. Note should be taken of the following in respect of MR A.K. SINGH :-

- A. The former Director of Indian Education MR G. KROG did not want him promoted because of his left-wing leanings.
- B. MR A.J. DU TOIT, Former Chief Director of the Department of Budgetary and Auxiliary Services confirmed that MR A.K. SINGH once informed him that he cannot see his way clear to voting in the Tricameral System.
- C. DR J. GILLILAND, Former Director General of our Administration confirmed in his evidence the statement made by MR A.K. SINGH that he will not go out of his way to promote the House of Delegates.

D. I informed the Commission that MR A.K. SINGH requested to go on early retirement as he wanted to collect his gratuity because he believed the ANC will take over this country and also suggested to me that I should also resign from Parliament and collect my gratuity as he was convinced about the ANC running this country.

The Teacher's Association of South Africa complained about individual cases at the Commission which were outside the terms of reference. All the cases brought by the Teachers' Association of South Africa were those of known UDF Activists.

I must advise You of the following because of my deep loyalty to this country.

A. MR V.S. TEEWARY was one of the cases highlighted at the Commission by the Teacher's Association of South Africa. He is a known SACOS and UDF supporter. Both MR R.P. WRONSLEY and MR A.K. SINGH ensured that special rating was done in MR TEEWARY'S case and he was promoted to a position of a school principal last month.

B. MR PAT SAMUELS, on his return from LUSAKA after meeting the ANC, was recently feted by addressing the inspectors of Education.

MR President, events like this did not happen before in our Administration. These are the people whose cause was championed by Advocate ANTON ACKERMANN and which was allowed by MR JUSTICE JAMES. I am afraid our Department of Education is moving towards the left. MR R.P. WRONSLEY is allowing it in spite of my advice. If nothing is done, then I am afraid that Indian Education, like the University of Western Cape, will be controlled by revolutionary elements.

Advocate ANTON ACKERMANN manipulated investigations and evidence before Commission. They thwarted investigation of persons whom I wanted to investigate and also thwarted evidence that could be presented in my favour. If anyone wanted a witness to be subpoenaed a request had to be made to the Chairman and an affidavit was required from the proposed witness. Yet when I was giving evidence, two officials were called without them following the required procedure.

I had not objected to matters being investigated before the House of Delegates was established even though they fell outside the terms of reference of the Commission. In respect of my business and the proposed consortium which included my two butchers and Moorton and Montford butcheries, I did not object. I did not present any evidence because they were non issues. The only objection I lodged was in respect of the investigation into the accounts of my Party. Donors to my Political Party were treated like criminals and subjected to humiliation with the support of MR JUSTICE JAMES. This led me to comment that the manner in which the James Commission of Inquiry had conducted itself will lead to the growth of Indian Political Parties suffering a set back for eight years.

I believe that the role of Advocate ANTON ACKERMANN succeeding the UDF has scored its greatest triumph and history will record this.

Mr President, Your stand against the ANC is well known. Let our intelligence services investigate the relationship between MR MACK MAHARAJ who is in LUSAKA and MR A.K. SINGH. I present this to you with the hope that these will not go unnoticed.

I am very deeply committed to clean and sound Administration. It is for this reason that I welcomed the appointment of MR R.P. WRONSLEY as Director General. From February this year, my Party Members began receiving signals about MR WRONSELY'S entry into the political arena and was being seen continually in the company of MR I. KATHRADA. Strong note should be take of the following in respect of MR R.P. WRONSLEY :-

A. It was divulged that he drafted the affidavit which Deputy Minister S. PACHAI submitted against me to the Commission. This is like DR J.P. ROUX drafting a document for a Minister in the Cabinet against You. This is a cardinal sin from which MR R.P. WRONSLEY cannot escape.

B. MR R.P. WRONSLEY, against my advice, engaged the services of Advocate COLLIN MANN, a known right winger to be present at the Commission at an unnecessarily cost of approximately R200 000,00. Advocate COLLIN MANN was used to take sides in disputes at the Commission

MR WRONSLEY'S evidence against me at the James Commission of Inquiry, inter alia, includes the following :-

A. Making photocopies on the House of Representative's machine. I informed the Commission that these photocopies were interviews you had with the Washington Post which I had posted to 50 key figures in the Indian Community.

B. You had advised Ministers to take care of security and I decided to search for land after a bomb and gun attack on my residence. MR WRONSLEY did not discuss this matter with me but referred it to the James Commission of Inquiry, not knowing that I had intended to refer this matter to the Cabinet Committee - re Privileges for Political Office Bearers.

C. He had complained to the Commission that I had decided not to act on a request from the House of Delegates to halt the allocation of Service Station sites, not knowing that I had directed the Chief Director of my Department to halt the allocation.

I believe that MR WRONSLEY was responsible for arranging other Officials to give evidence against me. Many of them appeared to be under pressure and reluctant.

I treated some of the former Official's evidence with contempt. For example MR R.N. BLUMRICK, a former Official stated that he resigned because I had instructed him to purchase the MALGATE BUILDING. I treated this as a joke because the truth of the matter was that MR BLUMRICK retired at the age of sixty and the decision to purchase MALGATE BUILDING was made by DR LAPA MUNNIK, the former Minister of Public Works and Land Affairs.

Much has been said about the evidence of MR G.V. PILLAY. MR I. O. Solidarity's National Chairman confirmed at the Commission the role of Solidarity in compilation of MR PILLAY'S affidavit against me. I also confirmed that MR PILLAY'S affidavit was polished and typed in J.N. REDDY'S office. MR PILLAY had been untruthful to the extent that MR JUSTICE JAMES once remarked "You cannot believe anything which PILLAY say".

Subsequently he produced tapes which he told me somebody on behalf of Solidarity was offering him R60 000,00 to purchase. He tried to use me after he had given evidence and was disappointed.

In respect of the tapes, I challenged its authenticity and quoted from the all England and South African Law Reports in respect of its admissability of tapes. I had requested my experts to investigate the tapes and did not complete listening to the originals when MR JUSTICE JAMES suddenly decided to close the hearing on th 9th December 1988. My chances of listening to the originals of the tapes were not given to me in full. I was treated unfairly and could not deal with the contents of the tapes. I am satisfied that any reasonable Court of Law would rule that the tapes would have no value as evidence especially that they were being present by a self-confessed perjurer, cheat and liar.

I have been treated very unfairly and badly both by MR JUSTICE JAMES and Advocate ANTÖN ACKERMANN. The big bribery and corruption did not come to the fore because there was no bribery and corruption. Instead the Commission allowed witnesses, in some cases twice, to make sensational statements and wild unsubstantiated allegations. When I replied to these allegations, my attempts were thwarted.

MR JUSTICE JAMES for example allowed four witnesses to humiliate me on my quest for a home but tried to restrain me when I was giving evidence on this matter stating that he was not going to report on this matter. The same applies to the Odeon and Checkers matters.

Mr President, I am an individual, like anyone else can at times be regarded as insignificant while the cause for which we stand is more important. I am convinced that behind the scenes Advocate ANTON ACKERMANN was being influenced by someone and this needs investigation. This had an effect on the entire course of the Commission which at times became a mockery of the system. I gain the impression that MR JUSTICE JAMES appeared to be blinded by the action of Advocate ANTON ACKERMANN.

Place on record the following :-

- A. That I have done nothing that can be regarded as criminal.
- B. I have not been dishonest.
- C. I Have not enriched myself:

In my capacity as Chairman of the Ministers' Council, I had to act with strength to keep various forces at bay. I had to deal with the lavishness and laziness of Members of the Ministers' Council and a few Senior Officials from time to time. This was some times unpleasant, but I have accepted it as one of the responsibilities of a high office.

Attitude towards the new Constitution is mixed, therefore there is a need to protect the interest of the tax payer. In respect of Deputy Minister S. PACHAI, I suggest that you obtain details from the Minister of Environment, MR G.J. KOTZE about MR PACHAI'S lavishness etc.

The James Commission of Inquiry conducted its investigation in an unfair manner and much of it cannot be written in this letter which I have decided to write on a very confidential basis especially because of my continued commitment. I have sacrificed my personal life and my family has suffered because of my dedicated duty.

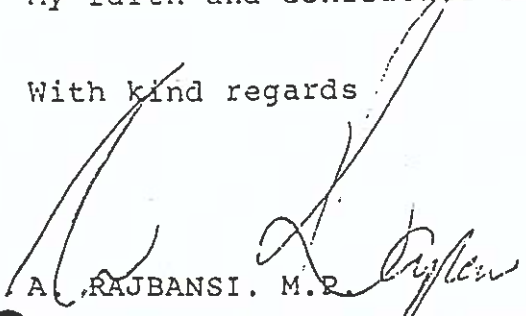
I will remain in the fore-front of national politics of this country for many years to come. I am not going to allow myself to be thwarted by an unfair investigation.

I do not deserve this treatment.

I beg of you to give me a full hearing by appointing an Office immediately before MR JUSTICE JAMES compiles his final report so that my grievances and complaints of my Party can be redressed.

My faith and confidence in you, MR PRESIDENT is unshaken.

With kind regards



A. RAJBANSI. M.P.  
 CHAIRMAN : MINISTERS' COUNCIL  
 ADMINISTRATION : HOUSE OF DELEGATES

# A-G: police trial

Ivor Powell

AN INQUEST court sat stumped this week as it heard how police legal representatives tried to get a deputy Attorney-General removed from the case — because he was "the type of person who likes to go for the police".

The inquest — which is being heard before Mr Justice B O'Donovan in the Rand Supreme Court — concerns the deaths in March this year in Daveyton on the East Rand of 14 people killed in a three-sided clash involving the police, supporters of

the ANC and Inkatha supporters.

Most of the deaths allegedly occurred when police fired into the ANC crowd after an SAP member had been hacked to death with pangas.

Deputy Attorney General, Advocate Anton Ackermann put the alleged interference by police counsel on court record at the start of proceedings on Monday.

Mr Ackermann, who is leading the evidence on behalf of the Attorney General of the Transvaal, Mr Klaus von Lieres van Wilkau, told the court that senior police counsel Flip Hattingh (SC) informed him in the presence of all the members of

the police legal team that he was "dissatisfied with the lack of impartiality I exhibit in these proceedings".

According to Mr Ackermann's testimony Mr Hattingh then went on to complain to the Commissioner of Police and request that the Commissioner "contact the Attorney-General to do something about it".

Mr Ackermann claimed the Attorney-General was in fact contacted but "I can assure him (Mr Hattingh) and this court that the Attorney General Transvaal and for that matter any attorney general of this country will not instruct his advocates to cool it or not to rock the boat where the police are

Sunday

## ... to get rid of me

...  
Mr Ackermann also pointed out in his submission that as an appointee of the inquest court he had no brief in this matter except to assist his lordship to arrive at the true facts.

He went on to ask: "If my learned friend really had any valid grounds for his allegation, why did he not avail himself of legal remedies, that is to institute for instance review proceedings?"

Approached for comment on the instance, Lawyers for Human Rights National Director Brian Currin said Mr Hattingh's alleged actions had been "totally irregular".

"It is quite clear he has gone

beyond his brief and I wouldn't be surprised if the matter was reported to the Bar Council."

He went on to describe the alleged approach to the Commissioner of Police as "typical of the police culture which persists in this country. These people are so used to running the show they don't know how to stop."

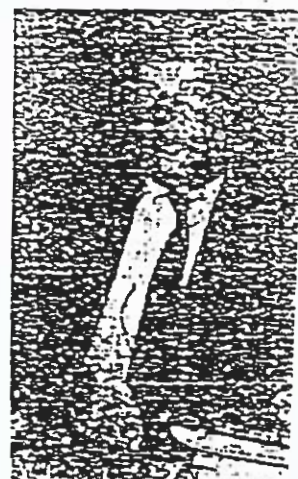
Earlier this year Mr Ackermann led the evidence at another inquest into 41 security forces killings at Sebokeng — where he earned a special commendation from presiding judge, Mr Justice Eddie Stafford for his thoroughness and the impartial way in which he conducted proceedings.

Although the Sebokeng in-

quest recommended prosecution in only one instance, in an unprecedented attack on the security forces, Judge Stafford found the SADF members in general — though not individually — "criminally responsible" for murder and causing grievous bodily harm as well as perjury and conspiring to defeat the ends of justice.

Neither Mr Hattingh nor Mr von Lieres was available for comment yesterday.

Mr Hattingh appeared as counsel for the notorious Civil Co-operation Bureau in last year's Harms Commission into irregularities in the security forces.



FLIP HATTINGH ... to remove deputy A-G

NEWS SOUTH AFRICA

# Basson prosecutor gets international honour

Published 24 years ago



Senior prosecutor in the Wouter Basson trial, Anton Ackermann SC, received worldwide recognition when he was named winner of an international special achievement award for prosecutors.

He was also named prosecutor of the year in South Africa.

Ackermann, a member of the National Director of Public Prosecution's office, who heard of the award last week, and who has prosecuted in some of the most famous cases in South Africa, will receive his award from the International Association of Prosecutors in September in Sydney, Australia.

It is the first time that an individual prosecutor has been awarded this honour, according to Advocate Retha Meintjes, a member of the association's executive committee.

He will share the award with the team of Scottish prosecutors involved in the Lockerby trial.

The Public Prosecutor's Pretoria office earlier nominated Ackermann to the Society of State Advocates of South Africa, which named him, together with a Cape Province prosecutor, as the best prosecutors of the year.

The society in turn nominated them to its international counterpart, where Ackermann won the international special achievement award.

Asked what it will mean for his career, Ackermann smilingly answered: "A trip to Sydney."

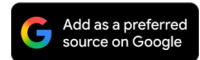
Ackermann has prosecuted in some of the most publicised cases in South Africa's history. These include the trial of Andre Stander, one of the country's most notorious bank robbers and a former policeman.

Standar was sentenced to 75 years in jail on 23 charges of armed robbery.

Other cases include the trial of Charmaine Phillips and Peter Grundlingh, South Africa's Bonnie and Clyde, on five charges of robbery and murder; the trial of Afrikaner



TUESDAY, MARCH 3, 2026



He, however, refused protection, said Meintjes.

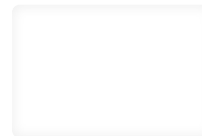
- An overseas publisher has given journalist Jacques Pauw the go-ahead to write a book on Ackermann. - Pretoria Correspondent

ADVERTISEMENT

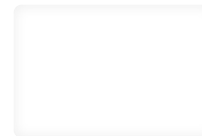
### Iranians in South Africa react ...



Featured in: WAR IN THE MIDDLE EAST | Now Israel bombs Lebanon



Iranians in South Africa react to the Middle East conflict



Iran launches retaliatory strikes after US and Israel...



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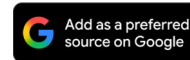
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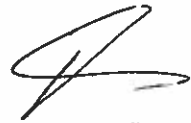


TUESDAY, MARCH 3, 2026



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**MR A R ACKERMANN S C**

Fax 011 2505150

1. Mr A R Ackermann is a Deputy Director of Public Prosecutions for the Transvaal region. He is one of South Africa's most celebrated and distinguished criminal prosecutors and a remarkable witness to and player in this country's extraordinary history.

Anton Ackermann was born in 1952 and obtained the degree B Juris in 1973, at which stage he also started with his career as prosecutor. He obtained his LLB degree in 1975, was admitted as an advocate in the High Court of South Africa in 1976 and was awarded the status of Senior Consultus in 1993. He has prosecuted and or argued the State's case in many reported decisions.

2. Mr Ackermann is a man of unfeigned integrity and a prosecutor at heart. He proved himself to be a fearless litigator with a strong sense of fairness who will pursue the cause of justice, irrespective of the circumstances or the consequences.

3. Although Mr Ackermann was a member of the apartheid legal state, he always remained true to his oath of office. His perseverance, integrity and pursuit for justice was as evident in his prosecutions of "terrorists" who committed crimes of murder and terrorist acts under the apartheid regime, as it is in his prosecutions of high - profiled employees of the Apartheid government who committed crimes.

4. In 1974, Mr Ackermann was a young prosecutor in a judicial inquest into the death of a detainee. He alleged that members of the notorious Brixton Murder and Robbery Unit of the SA Police were responsible for the death. He was immediately transferred. In a letter attached as annexure A, adv G Bizo SC, the personal legal advisor of Mr Nelson Mandela over many years, refers to this matter and remarks that Ackermann's objectivity "gave one hope that despite the pressures that must have existed on a comparatively junior member of the profession, he courageously and correctly submitted what he believed to be in accordance with his oath of office.....I have always singled him out as the outstanding exception amongst those who thought that protecting the police was more important than serving justice"

5. In the eighties, Mr Ackermann was instructed to manage another high - profile prosecution on behalf of the Apartheid government: Mr Allan Boesak (a well known anti - apartheid activist) for contravention of the Terrorism Act. After he drafted an indictment, it became apparent that the government wanted to make a political point through the prosecution: they insisted that the prosecution proceed on the basis of a grand conspiracy which would include all of the prominent anti-

apartheid movements, including the internal United Democratic Front. Mr Ackermann refused. His decision was based on sound legal principles. In a series of meetings with the highest political figures in South Africa at the time, including State President P W Botha, he maintained his point of view. Another prosecutor was then identified to proceed with this matter. A year later, the investigation into this "conspiracy trial" was abandoned.

6. During 1988 Mr Ackermann was appointed to appear on behalf of the State in the high - profiled commission of enquiry, headed by Judge President James, into alleged corruption by a member of Parliament, Minister A Rajbansi, who also chaired the Minister's Council in the House of Delegates. During his 10 day long cross - examination of Rajbansi, the latter was exposed . A criminal prosecution ensued as a result of this commission, leading to Minister Rajbansi's conviction on charges of corruption. *(Please confirm!)*
7. In the early nineties, Mr Ackermann led evidence on behalf of the State in a formal inquest where the police shot and killed 14 people in Daveyton. When Mr Ackermann suspected that the relevant police investigators were covering for their colleagues, he refused their further participation in the investigation and arranged for their replacement. He also fearlessly placed attempts by counsel for the Police on record. As a result, the Police Commissioner attempted to have Ackermann fired. At the end of the inquest, the police were held criminally responsible for the killings. The South African Defence Force was similarly held criminally accountable after the Sebokeng inquest into the death of 41 civilians where again Mr Ackermann was charged with leading the evidence. In this instance, he was lauded by the presiding Judge with the thorough and impartial way in which he conducted the proceedings. A newspaper clipping reflecting the above is attached as annexure B.
8. Mr Ackermann has prosecuted in some of the most famous cases in South Africa's criminal history: André Stander, South Africa's most famous bank robber and a senior officer in the Police Service, on 23 charges of Armed Robbery. He was sentenced to 75 years' imprisonment; Charmaine Phillips and Peter Gründlingh, South Africa's Bonnie and Clyde, a run-away couple on 5 charges of Robbery and Murder; Eugene Terreblanche, the charismatic leader of the Afrikaner Weerstandsbeweging, a rightwing political movement, on counts of Public Violence in the so - called "Battle of Ventersdorp"; Ferdinand Barnard\*; Eugene de Kock\*\*; and Wouter Basson\*\*\*.
9. During the prosecution of Ferdinand Barnard\*, a member of the Civil Co-operation Bureau(CCB), a cover-up organisation of the SA Defence Force tasked with eliminating political enemies of the



the Presiding Officer's recusal, based on grounds of bias in favour of the defence. He also temporarily withdrew from the trial in an act of protest after he himself payed the costs(R 12000 or approximately \$2000) of an important witness from overseas to testify at the trial, the relevant responsible authorities having been caught up in red tape.

13. During his illustrious career Mr Ackermann met and interacted internationally with several high profile prosecutors, inter alia Dr Valentin Roschacher and Felix Banziger - respectively the Attorney - General and Deputy Attorney General of Switzerland, and Ron Henry, the Assistant District Attorney for Orlando, Florida in the United States of America.
14. In further motivation, a document drafted by a prominent South African writer, Jacques Pauw, to his publishers for an advance on a book he is planning to write about Mr Ackermann, is attached as annexure D. The go-ahead has been given by an overseas publisher..
15. Thus far Anton Ackermann has been the only prosecutor to prosecute former leaders involved in atrocities committed during the apartheid regime. He has clearly demonstrated special dedication in the pursuit of his professional responsibilities, even during the apartheid years, and has also discharged same in the face of hardship and adversity in circumstances which deserve recognition by an organisation such as the IAP.

Annexures A-D, referred to, will be made available at the meeting.

Retha Meintjes

Member of the executive Committee.

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IN THE HIGH COURT OF SOUTH AFRICA  
GAUTENG DIVISION, PRETORIA

Case No: 5245/25

In the matter between:

**THABO MVUYELWA MBEKI** 1<sup>st</sup> Applicant

**BRIGITTE SYLVIA MABANDLA** 2<sup>nd</sup> Applicant

And

**LUKHANYO BRUCE MATTHEWS CALATA** 1<sup>st</sup> Respondent

**ALEGRIA KUTSAKA NYOKA** 2<sup>nd</sup> Respondent

**BONAKELE JACOBS** 3<sup>rd</sup> Respondent

**FATIEMA HARON MASOET** 4<sup>th</sup> Respondent

**TRYPHINA NOMANDLOVU MOKGATLE** 5<sup>th</sup> Respondent

**KARL ANDREW WEBER** 6<sup>th</sup> Respondent

**KIM TURNER** 7<sup>th</sup> Respondent

**LYNDENE PAGE** 8<sup>th</sup> Respondent

**MBUSO KHOZA** 9<sup>th</sup> Respondent

**NEVILLE BELING** 10<sup>th</sup> Respondent

**NOMBUYISELO MHLAULI** 11<sup>th</sup> Respondent

**SARAH BIBI LALL** 12<sup>th</sup> Respondent

**SIZAKELE ERNESTINA SIMELANE** 13<sup>th</sup> Respondent

**SINDISWA ELIZABETH MKONTO** 14<sup>th</sup> Respondent

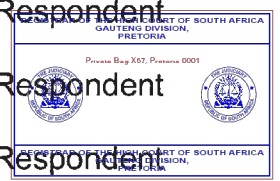
**STEPHANS MBUTI MABELANE** 15<sup>th</sup> Respondent

**THULI KUBHEKA** 16<sup>th</sup> Respondent

**HLEKANI EDITH RIKHOTSO** 17<sup>th</sup> Respondent

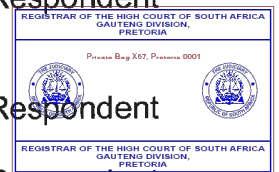
**TSHIDISO MOTASI** 18<sup>th</sup> Respondent

**NOMALI RITA GALELA** 19<sup>th</sup> Respondent



*Thabo M. M.*

<b>PHUMEZA MANDISA HASHE</b>	20 <sup>th</sup> Respondent
<b>MKHONTOWESIZWE GODOLOZI</b>	21 <sup>st</sup> Respondent
<b>MOGAPI SOLOMON TLHAPI</b>	22 <sup>nd</sup> Respondent
<b>FOUNDATION FOR HUMAN RIGHTS</b>	23 <sup>rd</sup> Respondent
<b>GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA</b>	24 <sup>th</sup> Respondent
<b>PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA</b>	25 <sup>th</sup> Respondent
<b>MINISTER OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT</b>	26 <sup>th</sup> Respondent
<b>NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS</b>	27 <sup>th</sup> Respondent
<b>MINISTER OF POLICE</b>	28 <sup>th</sup> Respondent
<b>NATIONAL COMMISSIONER OF THE SOUTH AFRICAN POLICE SERVICE</b>	29 <sup>th</sup> Respondent
<i>In re:</i>	
<b>LUKHANYO BRUCE MATTHEWS CALATA</b>	1 <sup>st</sup> Applicant
<b>ALEGRIA KUTSAKA NYOKA</b>	2 <sup>nd</sup> Applicant
<b>BONAKELE JACOBS</b>	3 <sup>rd</sup> Applicant
<b>FATIEMA HARON MASOET</b>	4 <sup>th</sup> Applicant
<b>TRYPHINA NOMANDLOVU MOKGATLE</b>	5 <sup>th</sup> Applicant
<b>KARL ANDREW WEBER</b>	6 <sup>th</sup> Applicant
<b>KIM TURNER</b>	7 <sup>th</sup> Applicant
<b>LYNDENE PAGE</b>	8 <sup>th</sup> Applicant
<b>MBUSO KHOZA</b>	9 <sup>th</sup> Applicant
<b>NEVILLE BELING</b>	10 <sup>th</sup> Applicant
<b>NOMBUYISELO MHLAULI</b>	11 <sup>th</sup> Applicant
<b>SARAH BIBI LALL</b>	12 <sup>th</sup> Applicant
<b>SIZAKELE ERNESTINA SIMELANE</b>	13 <sup>th</sup> Applicant



*Th. C. 2*

**SINDISWA ELIZABETH MKONTO**

14<sup>th</sup> Applicant

**STEPHANS MBUTI MABELANE**

15<sup>th</sup> Applicant

**THULI KUBHEKA**

16<sup>th</sup> Applicant

**HLEKANI EDITH RIKHOTSO**

17<sup>th</sup> Applicant

**TSHIDISO MOTASI**

18<sup>th</sup> Applicant

**NOMALI RITA GALELA**

19<sup>th</sup> Applicant

**PHUMEZA MANDISA HASHE**

20<sup>th</sup> Applicant

**MKHONTOWESIZWE GODOLOZI**

21<sup>st</sup> Applicant

**MOGAPI SOLOMON TLHAPI**

22<sup>nd</sup> Applicant

**FOUNDATION FOR HUMAN RIGHTS**

23<sup>rd</sup> Applicant

and

**GOVERNMENT OF THE REPUBLIC OF SOUTH AFRICA**

1<sup>st</sup> Respondent

**PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA**

2<sup>nd</sup> Respondent

**MINISTER OF JUSTICE AND CONSTITUTIONAL  
DEVELOPMENT**

3<sup>rd</sup> Respondent

**NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

4<sup>th</sup> Respondent

**MINISTER OF POLICE**

5<sup>th</sup> Respondent

**NATIONAL COMMISSIONER OF THE SOUTH AFRICAN  
POLICE SERVICE**

6<sup>th</sup> Respondent

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**FOUNDING AFFIDAVIT**

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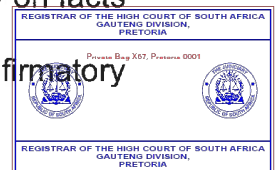
I, the undersigned,

**THABO MVUYELWA MBEKI**

do hereby make oath and say:

*Th. M. 3*

1. I am an adult male and the former President of the Republic of South Africa. I served as South Africa's President from 14 June 1999 to 24 September 2008.
2. Unless otherwise stated or the context indicates to the contrary, the facts set out in this affidavit are within my personal knowledge. They are, to the best of my knowledge and belief, all true and correct. Where I rely on facts not within my personal knowledge, I provide the necessary confirmatory affidavits.



## PARTIES

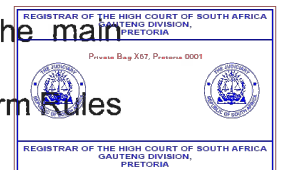
3. I am the first applicant.
4. The second applicant is Ms Brigitte Sylvia Mabandla ("**Ms Mabandla**"). For present purposes, Ms Mabandla was the Minister of Justice and Constitutional Development ("**Minister of Justice**") from 2004 to 2008. Her supporting affidavit is attached to this affidavit.
5. The first to 23<sup>rd</sup> respondents instituted an application before this Honourable Court, under case number 5245/25 ("**main application**"). They are respectively described in the founding affidavit in the main application (in paragraphs 4, 33 to 55). I do not wish to unduly lengthen this affidavit by repeating those descriptions here.
6. The 24<sup>th</sup> to 29<sup>th</sup> respondents consist of the Government of the Republic of South Africa, the President of the Republic, the Minister of Justice and

*M. G. A.*

Constitutional Development, the National Director of Public Prosecutions, the Minister of Police and the National Commissioner of the South African Police Service. They have also been described in the main application (paragraphs 56 to 61).

## PURPOSE OF AFFIDAVIT

7. I depose to this affidavit in support of mine and Ms Mabandla's application to intervene as the 7<sup>th</sup> and 8<sup>th</sup> respondents (respectively) in the main application. Our application is made in terms of rule 12 of the Uniform Rules of this Honourable Court.



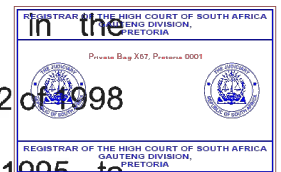
8. The applicants in the main application ("**Calata applicants**") seek the following relief:

8.1 a declarator that the 1<sup>st</sup> to 6<sup>th</sup> respondents' ("**government respondents**") conduct in unlawfully refraining and/or obstructing the investigation and/or prosecution of apartheid-era cases that were referred to the National Prosecuting Authority ("**NPA**") by the Truth and Reconciliation Commission ("**TRC**") ("**the TRC cases**") or to otherwise unlawfully abandon or undermine such cases:

8.1.1 violates the *Calata* applicants' rights, as well as those of the families of the victims and survivors of the apartheid-era crimes ("**the families**"), to equality, dignity, life and bodily integrity in terms of sections 9, 10, 11 and 12 of the Constitution;

*T.M. G. 116*

- 8.1.2 is inconsistent with the values in section 1 (a) and the rule of law as enshrined in section 1 (c) of the Constitution;
- 8.1.3 is inconsistent with the principles, values and obligations imposed by the Promotion of National Unity and Reconciliation Act 34 of 1995, read with the postscript to the Interim Constitution;
- 8.1.4 breaches the duties and obligations contained in the Constitution, the National Prosecuting Authority Act 32 of 1998 and the South African Police Service Act 68 of 1995, to investigate and prosecute serious crime, and not to interfere with the legal duties of prosecutors and law enforcement officers; and
- 8.1.5 is inconsistent with South Africa's international law obligations in terms of sections 231 to 233, read with section 39(b), of the Constitution.



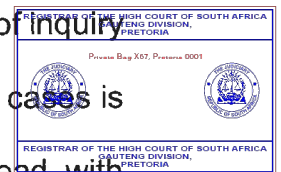
9. The phrase "TRC cases" was used with regard to two instances:-

- 9.1 the cases referred to the NPA by the TRC - the National Executive never interfered with the NPA with regard to these "TRC cases".
- 9.2 the cases that the National Executive foresaw would arise after the TRC had completed its work, sometimes referred to as "unfinished TRC business". These were also referred to as "TRC cases". It was with regard to these "TRC cases" that the 2003 speech refers. The

*Th. G.H. 6*

issues about 'Prosecution Policy' and the 'Presidential Pardons' refer only to this second set of "TRC cases".

10. Anyway, on the back of what is set out in paragraph 8, the *Calata* applicants pray for the payment of constitutional damages by the South African government.
11. The applicants also seek a declarator that the failure and/or refusal by the current President, the 2<sup>nd</sup> respondent, to establish a commission of inquiry into the suppression of the investigations/prosecution of the TRC cases is inconsistent with his responsibilities under sections 84(2)(f) read with ss1(c), 7(2), 83(b) and 237 of the Constitution and violates the applicants' rights, as well as those of the families, to equality, dignity, life and bodily integrity in terms of sections 9, 10, 11 and 12 of the Constitution. They seek that the President's failure or refusal be reviewed and set aside, and that he be directed to promulgate the establishment of a commission of inquiry within 30 calendar days of the order. One of the questions that they request the commission to investigate is whether there were efforts to influence or pressure members of the National Prosecuting Authority and/or the South African Police Service to stop investigating and/or prosecuting TRC cases, why this was done, and by who. The commission would then make recommendations, including directing that prosecutions be instituted against persons found to have acted unlawfully.
12. I noted above that I was South Africa's President from 1999 to 2008, and that Ms Mabandla was the Minister of Justice from 2004 to 2008. The work of the TRC was started in 1996, when former President Nelson Mandela



*Th. P. N.*

was the South African President. The TRC released the first five volumes of its final report on 29 October 1998, and the remaining two volumes were released during my term as President – on 21 March 2003.

13. Although styled in the notice of motion as unlawful conduct by the government respondents, the *Calata* applicants' claimed relief is underpinned by allegations of unconstitutional, unlawful and criminal conduct by me and Ms Mabandla during our tenure. I set out the allegations that relate to our alleged unlawful conduct below.

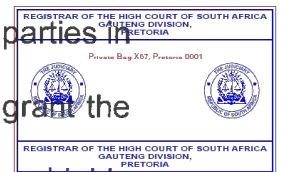


14. Given the nature of the direct allegations made against Ms Mabandla and I, which underpin the relief that the *Calata* applicants seek, as well as the orders that they seek, Ms Mabandla and I seek leave to intervene as 7<sup>th</sup> and 8<sup>th</sup> respondents. We have standing under section 38(a), (c) and (d) of the Constitution and under the common law to intervene as 7<sup>th</sup> and 8<sup>th</sup> respondents. We also have a direct and substantial interest in the subject matter of the application. Our legal rights will be adversely affected by the judgment and order of the Court. I am advised that whether we have such legal rights needs to be determined on a case and context-specific basis. I shall demonstrate below that when assessed on a case and context-specific basis, the intervention application ought to be granted.
15. In respect of section 38(c) of the Constitution, Ms Mabandla and I also act as members of and in the interest of the administration of which I was President. Some of the members of that administration are mentioned by name whilst others are not. It is also in the public interest as envisaged in section 38(d) of the Constitution that the full facts are placed before the

Court to determine this important matter of huge public importance that the *Calata* applicants have brought to this Court.

16. In summary, the direct and substantial interest that Ms Mabandla and I assert arise in the following circumstances:

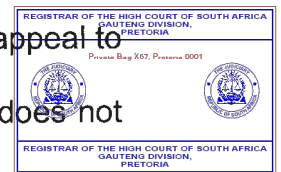
16.1 First, the serious allegations of unconstitutional, unlawful and criminal conduct against Ms Mabandla and I, as well as members of the administration of which I was President, are issues between the parties in the litigation. The Court must determine the issues in order to grant the *Calata* applicants the relief that they seek. Those allegations are highly defamatory and damaging of our dignity and reputation. Our character is beyond all price. In such circumstances, Ms Mabandla and I are entitled to intervene to dispute the serious and damaging allegations made and to place direct evidence before this Court for it to determine the correctness or otherwise of the serious and damaging allegations against us on which the applicants rely for their relief.



16.2 Second, Ms Mabandla and I dispute that we or the administration of which I was President interfered with the NPA's prosecution of TRC cases and committed unconstitutional, unlawful and criminal acts as the *Calata* applicants allege. We intend to place relevant direct evidence before this Court to oppose the allegations on which the *Calata* applicants seek relief and to have legal submissions made on our behalf in that regard. Denying us intervention in such circumstances would conflict with, and unjustifiably deny us, our right under section 34 of the Constitution to have this dispute resolved by the application of law decided in a fair public hearing before

*Th. G. N.*

this Court. Once we are denied the right to intervene as respondents and defend ourselves against the serious and damaging allegations, we would not be able in future to relitigate the findings of this Court against us. It is unlikely that a court of appeal would allow us the right to intervene to challenge any adverse findings by this Court if we are denied the opportunity to defend ourselves as respondents before this Court. I am advised that there is authority in the highest court in the land that a witness who was not party to proceedings may not seek to intervene on appeal to challenge adverse findings against him or her where he or she does not challenge the order that the court of first instance has granted.

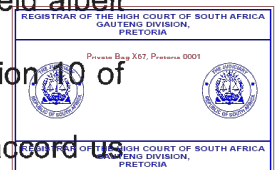


- 16.3 Third, given the allegations of intentional interference with the NPA and the prosecution of TRC cases for alleged personal interests or private organisational interests, the government, represented by the first, second, third and fifth respondents, may contend that this Court must find that if there was unconstitutional, unlawful or criminal conduct by Ms Mabandla and I, and the administration of which I was President, it is conduct that is contrary to the public interest because the government and the public have an interest in protecting the rule of law and ensuring good governance. If the Court were to make a finding along these lines, Ms Mabandla and I may be exposed to potential personal liability by those that claim to have been victims of such unconstitutional, unlawful conduct and criminal conduct or whose claims derive from the rights of such victims. In other words, we may be exposed to loss of indemnity from liability as former government functionaries. Such a risk has far-reaching implications for our legal rights and financial interests.

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16.4 Fourth, it is clear from a reading of prayer 6 of the notice of motion and the founding affidavit that the commission of inquiry to be established must investigate Ms Mabandla's and my conduct, including that of the administration of which I was President. We clearly have a direct and substantial interest in the outcome of the application in relation to this prayer as well.

17. Finally, the allegations made against Ms Mabandla and I, if upheld, albeit false, will unjustifiably breach our right to human dignity in section 10 of the Constitution. To the extent that the common law does not accord us the right to intervene in the circumstances of the present case, the common law rules on intervention must be developed in terms of section 39(2) of the Constitution to recognise the right for a party to intervene as a respondent in circumstances similar to the present case. Those circumstances are where the present administration is challenged for breaches of the Constitution relying directly and only on alleged conduct of the former administration, where named members of the former administration are expressly and directly alleged to have acted in an unconstitutional, unlawful and criminal manner. This Court would fail to promote the spirit, purport and objects of the Bill of Rights if it does not develop the common law to recognise our right to intervene in such circumstances.



## **ALLEGATIONS UNDERPINNING RELIEF SOUGHT IN MAIN APPLICATION**

### **General allegations**

*TM 11/11*

18. It is true that accountable governance and social trust in such governance depend on public officials making decisions that are both reasonable and responsive.
19. In the main application, the *Calata* applicants allege, however, that this principle was violated due to political interference in the prosecution of the TRC cases. Their central allegation is that there was a deliberate political decision, especially during my tenure as the President, not to prosecute individuals who committed apartheid-era crimes, and who were not granted amnesty by the TRC. According to the applicants, this decision deprived them of substantive rights and entitlements under the Constitution.
20. The *Calata* applicants allege that with the exception of the Mandela administration, the post-apartheid state deliberately delayed the investigation of the TRC cases and prosecution of perpetrators. This delay, according to the *Calata* applicants, suggests political compromise or a deliberate tolerance of these crimes for *ulterior* motives.
21. From the perspective of the *Calata* applicants, this constituted a violation of the rule of law, which was further aggravated by the government's refusal or failure to thoroughly investigate the suppression of the TRC cases through a credible, independent, and transparent inquiry.
22. The *Calata* applicants directly allege that over the years, the Executive (at its highest level), the NPA, the South Africa Police Service ("**SAPS**") and other state organs colluded, or acquiesced in the suppression of the TRC cases. Despite various requests (so the allegation goes), the SAPS and the



*T.M. G. N.*

NPA did not investigate the TRC cases. In doing this, they sometimes acted on instruction from the highest level of the Executive – the President. The *Calata* applicants allege that this conduct was in bad faith and for unlawful political reasons.

23. The *Calata* applicants allege further that the suppression of the TRC cases by the state's machinery is contrary to the rule of law, which underpins South Africa's constitutional order. It is also a breach of South Africa's international law obligations, which are contemplated in sections 231 to 233 of the Constitution, read with section 39(b) of the Constitution. The suppression is lastly (according to the *Calata* applicants) a violation of rights in the Bill of Rights.



24. The *Calata* applicants also allege in their founding papers that Ms Mabandla and I violated rights [556]<sup>1</sup>, breached the rule of law [562]; and committed serious crimes [ 559].

25. They further allege that my administration was responsible for the brazen suppression of the TRC cases [405] – at my direction, and further that this violated multiple constitutional and statutory provisions [529 and 530], including section 32(1)(a) and (b) of the National Prosecuting Authority Act 32 of 1998 [529.5 and 530.2].

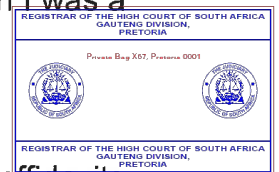
**Specific allegations made against me or relating to me and the Presidency**

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<sup>1</sup> All references in brackets are to paragraphs in the founding affidavit.

*Tom G. N.*

26. In what follows, I set out the allegations that the *Calata* applicants make against me and/or that relate to me and the Presidency/administration in their founding papers in the main application.
27. These allegations are relied on by the *Calata* applicants to demonstrate conduct (both direct and seemingly implied) on my part in suppressing unlawfully the TRC cases for political motivations. This nefarious and unconstitutional conduct is said to have commenced in 1998 when I was a Deputy President, until 2008 when I resigned from office.
28. In making these allegations, the *Calata* applicants rely primarily on affidavits and documents that were used in different forums, including Courts, over the years. They also rely on books authored and interviews by authors who have written on the TRC cases. Reliance is also placed on alleged oral accounts of incidents relayed by various persons.



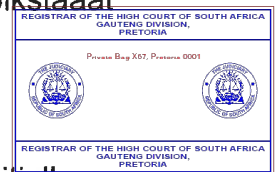
**Alleged conduct 1: the “deliberations” and attempts to amend TRC legislation**

- 28.1 The starting point is 1998, when I was the Deputy President.
- 28.2 The *Calata* applicants allege that in 1998, secret consultations began between the government and a group of high-ranking former generals of the SANDF and the security police. These “deliberations” were held to discuss questions of criminal liability arising from the past. The discussions were allegedly mediated by Mr Jürgen Kögl, who had close ties to key ANC members. In addition to former President Jacob Zuma, high-ranking ANC officials, including Mr Penuell Maduna (then Justice Minister), Mr Mathews

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Phosa, Dr Sidney Mufamadi, and Mr Charles Nqakula, participated at various times.

28.2.1 I must say immediately that the discussions which included Mr Jürgen Kögl and various Afrikaners had absolutely nothing to do with “questions of criminal liability arising from the past”. They were solely and exclusively about the various demands made by some Afrikaners about such matters as a ‘volkstaat’ and ‘the right to self-determination’.



28.3 I am alleged to have been involved in these “deliberations”, initially as Deputy President and later as President. [381.3] and that I frequently consulted with Former President De Klerk or other senior government officials. [379.1].

28.4 The “deliberations” were apparently aimed at finding mutual arrangements to avoid post TRC trials through a new indemnity mechanism. The allegation seems to be that the need for mutual agreement stemmed from the fact that in March 1999, the TRC had denied amnesty to 37 ANC leaders, among them myself, because we did not disclose any individual offences. [377 – 377.1].

28.5 The Calata applicants allege that during July 1998 the former SANDF Generals called for a blanket amnesty *for all sides*.

28.6 Soon thereafter, I informed Parliament that the government was reviewing additional amnesty proposals submitted by the SADF generals. [377.2].

*T.M. G. N.*

28.7 According to the former police commissioner and head of the Foundation for Equality Before the Law (FEL), Mr Johan van der Merwe, the FEL proposed an indemnity procedure based on admission of the crime committed without the need to make full disclosure. [379-381, 386]

28.8 I am alleged to also have attempted to amend TRC legislation to allow amnesty for collective responsibility without requiring individual disclosure. This, apparently, was because ANC spokesperson indicated that the Generals had expressed willingness to disclose information but only if guaranteed amnesty. [377.3].



28.9 By late 2002, when I was the President, the proposal and draft legislation had been finalised and was presented to Parliament for enactment. However, I rejected the legislation when it was presented to me for approval.

28.10 Before I rejected the amnesty legislation, the Generals were reportedly close to securing a resolution. The *Calata* applicants also allege that one Marais informed one Schmidt that after seven years of negotiations, the Generals and the government's security cluster had agreed on a legal framework for post-TRC amnesty, with the government commissioning a "law writer in Cape Town" to draft the legislation. [391].

### **Alleged conduct 2: presentation of the final TRC report and implementation**

28.11 The next pivotal point of alleged conduct relates to my presentation of the final TRC report on 15 April 2003 and the implementation thereof.

28.12 I addressed the National Houses of Parliament and the Nation on 15 April 2003, during the presentation of the final volume of the TRC Report. [124].

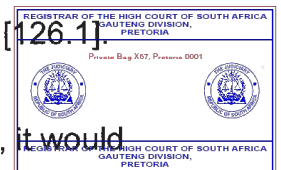
28.13 In my address, I apparently outlined formal strategies for political interference with the TRC cases. [126].

28.14 While I appeared to reject another amnesty due to its constitutional implications, I nonetheless emphasised the need to accommodate the many perpetrators who had not participated in the TRC process. [126.1].

28.15 I stated that while the NPA would be allowed to continue its work, it would be required to collaborate with intelligence agencies to enable those still willing to disclose the truth to enter into arrangements that are standard in the normal execution of justice. [126.2].

28.16 I also reaffirmed that individuals seeking justice or raising human rights violation grievances could still approach the courts and noted that relevant government departments were assessing the practical implementation of this approach and whether new legislation was necessary. [126.3].

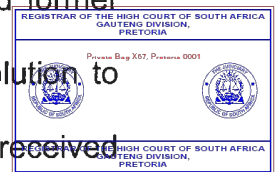
28.17 I signalled that the TRC cases would not follow the usual prosecutorial approach. Unlike other serious crimes, such as murder, the TRC cases would be treated differently, with perpetrators offered leniency or alternatives to prosecution. Families of victims could participate in these legal arrangements and, if dissatisfied, could still pursue private prosecutions or civil litigation. [127].



*Jan. C. N.*  
17

28.18 I allegedly also articulated a government policy that effectively deprioritised the prosecution of TRC cases, instead implementing special arrangements, and that my alleged reference to intelligence agencies foreshadowed their eventual influence over prosecutorial decisions. [128].

28.19 According to the *Calata* applicants, the abovementioned strategies were developed and shaped during the earlier mentioned “deliberations” that took place between me and/or government representatives and former President F.W De Klerk and/or his representatives to find a solution to avoid the prosecution of former members of the SAP who had not received amnesty. [397].



28.20 The *Calata* applicants contend that following my speech, those in power moved swiftly to shut down TRC-related cases. [129].

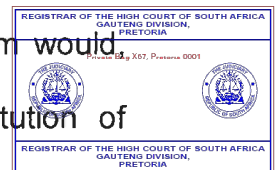
28.21 They allege that the state entities authorised to conduct investigations, namely the SAPS and the NPA, both refused to work on TRC cases *unless I approved this*. [137- 140].

28.22 The NPA (NDPP Ngcuka at the time) never contacted me for a decision regarding the investigation and prosecution of TRC-related cases probably because this was seen as a futile exercise.[141].

28.23 The *Calata* applicants allege that on 23 February 2004, a Director-General’s Forum chaired by Adv Pikoli (who was the Director-General of the Department of Justice at the time) met to consider how to give effect to the objectives in my April 2003 speech. Effectively, the meeting discussed how to deal with TRC-related cases.

*Adv. Pikoli*  
18

28.24 The Forum appointed an Amnesty Task Team to inter alia consider and report to the Forum on a criterion that the NPA would apply in deciding TRC prosecutions and formulate guidelines for prosecutions. [148-150]. The Amnesty Task Team recommended the establishment of a Departmental Task Team comprised of representatives from the Department of Justice, Intelligence Agencies, South African National Defence Force, South African Police Service, Correctional Services, NPA and the Office of the President. The Departmental Task Team would amongst other things, consider the advisability of the institution of proceedings committed during conflicts of the past *before* the institution of criminal proceedings. [155-156].



28.25 It is alleged that the government accepted and implemented much of the Amnesty Task Team's recommendations, and this is allegedly evident from the 2005 amendments to the Prosecution Policy and my introduction of a Special Dispensation for Political Pardons in 2007. [160].

28.26 The Calata applicants contend that as a result of the mooted strategies in my April 2003 speech, a moratorium of three years (2003 to 2005) was placed on the pursuit of TRC cases while the Amnesty Task Team worked on the drafting Prosecuting Policy for TRC cases. [179].

### **Alleged conduct 3: interference with prosecution in Chikane matter**

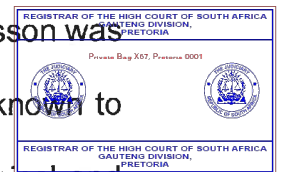
28.27 Mr Ackermann of the NPA had been appointed as the head of the Priority Crimes Litigation Unit (PCLU) which was the unit that was created within

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the NPA by Presidential Proclamation in March 2003 to deal with TRC cases. [106].

28.28 The TRC cases were declared priority crimes in terms of the PCLU proclamation by NDPP Ngcuka in May 2003 [107].

28.29 The Calata applicants allege that in defiance of the abovementioned moratorium, Mr Ackermann pursued cases in 2004 including one involving the poisoning of Reverend Frank Chikane in which Dr Wouter Basson was implicated together with three former policemen. Dr Basson is known to have been the former head of the apartheid government's chemical and biological warfare project. This was considered a priority case by the PCLU. [209]



28.30 Apparently on the morning of the police's intended arrest of Dr Basson and the co-accused, in November 2004, Mr Ackermann received telephone calls from their attorney, Mr Wagener and an official of the Department of Justice. The latter requested that Mr Ackermann suspend the arrests and halt work on all TRC cases pending the development of the prosecution guidelines. [182.1-4]

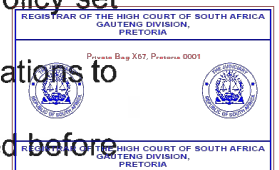
28.31 The Calata applicants contend that, according to Mr Wagener I authorised the suspension of these arrests "*in an extraordinarily swift move*". [183].

### **The implementation of the Prosecution Policy and prosecution in the Chikane matter**

*Tom. S. 2011*

28.32 In December 2005, the Prosecution Policy became effective. According to the Calata applicants, the amendments to the Policy were introduced in view of the essential features of my April 2003 speech on the TRC final report. [194].

28.33 The Calata applicants allege that while the amendments to the Policy professed to pursue various noble objectives including not perpetuating TRC amnesty, the maintenance of impunity was intended. The Policy set out procedural arrangements for those wanting to make representations to the NDPP in respect of their crimes arising from conflict committed before 11 May 1994. [195-196]. Moreover, it provided the criteria for determining whether to prosecute. These and other features, the Calata applicants contend, amounted to a rerun of the TRC's amnesty criteria and guaranteed the perpetuation of impunity. [198-199].

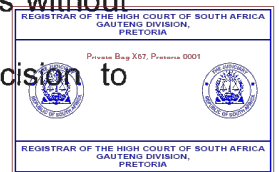


28.34 Once the guidelines were issued, the NPA proceeded with the TRC cases and Adv Pikoli invited representations from the people implicated in the Chikane attempted murder case. Adv Pikoli concluded to prosecute the accused and informed them of this in July 2006. [210, 219]

28.35 The Calata applicants allege that the Chikane prosecution prompted improper intervention by several Ministers. They contend that in 2006, Adv Pikoli was summoned to a meeting that was attended by several Ministers, including Minister Zola Skweyiya (then Minister of Social Development), Minister Mosiuoa Lekota (Minister of Defense), Acting Minister Thoko Didiza (representing the Minister of Justice – Minister Brigitte Mabandla) and Mr Jafta, the Chief Director in the Presidency. The meeting was

allegedly called by Acting Minister Didiza to address the prosecution in the Chikane matter. [244].

28.36 At this meeting, it apparently became clear to Adv Pikoli that there was a fear that cases like the Chikane matter could open the door to prosecution of ANC members. The Ministers apparently expressed concern at Mr Ackermann's involvement and sought clarity about whether he would be able to decide to undertake a prosecution of the ANC members without Adv Pikoli's approval. Adv Pikoli assured them that the decision to prosecute laid only with him. [225].



28.37 The Calata applicants allege that this meeting probably pointed to the overriding concern of government that pursuing a TRC case, like the Chikane matter, would put pressure on the NPA to pursue cases against the ANC members. [226].

28.38 In 2006, Adv Pikoli was again summoned to a meeting which took place at the office of the Presidency. At this meeting, Adv Pikoli proposed that Dr Ramaite, the Deputy National Director of Prosecutions, should chair the Task Team given the adverse views against Mr Ackermann. This proposal was accepted. A further meeting was held with Ministers in the Security Cluster, attended by the Minister of Safety and Security, the Minister of Social Development, Acting Minister of Justice, various DGs and Mr Jafta. The proposal to establish a working group was accepted and Adv Pikoli wrote to the various DGs, including Commissioner Selebi – inviting them to nominate a senior official to serve on the task team. [227-228].

28.39 The task team met for the first time on 12 October 2006 and was attended by Adv Pikoli together with the various officials. However, Adv Pikoli did not participate further in the activities of the task team. According to Mr Macadam, the NPA representative on the task team, the task team comprised primarily of members of the intelligence community who were intent on cross examining him as to why matters should be investigated rather than addressing the issue of outstanding cases. [229]

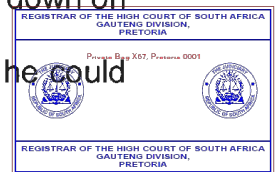
28.40 The Calata applicants note that the involvement in the task team of Mr Jafta, the Chief Director in the Presidency who had an intelligence background should not have been allowed because the policy guidelines did not make provision for a member of the Presidency to be part of the group assessing TRC cases. They allege that this involvement indicated that the Presidency intended to have direct involvement in the decisions relating to the TRC cases. [230].

28.41 Adv Pikoli received further representations from the suspects in the Chikane matter claiming that they had received indemnity against prosecution but after seeking independent advice Adv Pikoli was advised that the indemnities did not bar prosecution. In the meantime, however, the SAPS representative in the task team advised the NPA that National Commissioner Selebi did not believe Reverend Chikane was interested in prosecution and that the NPA needed to consult with Reverend Chikane about the proposed prosecution. Adv Pikoli thus instructed Mr Ackermann to confirm his position. However, on the same day, the head of the SAPS Legal Support sent a letter to the PCLU expressing the National



Commissioner's view that before any prosecutorial decision could be taken, the task team had to submit a final recommendation to the Committee of Directors General in respect of each case – which in turn must advise the NDPP who to prosecute or not. [233-234].

28.42 According to the Calata applicants, at the end of 2006, and after the abovementioned interactions, Adv Pikoli realised his counterparts in the other departments in the task team viewed their role as clamping down on the TRC cases from proceeding and to made clear to him that he could not proceed to prosecute without their permission. [236].



28.43 The Calata applicants contend that the central concern of government leadership was that the pursuit of the TRC cases could lead to cases against ANC members, and for this reason all cases had to be stopped even if it meant denying justice to families in the TRC cases. [237].

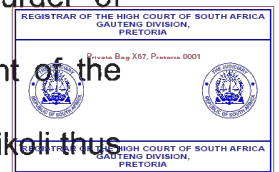
28.44 As a result of the differences within the task team, in early January 2007 Adv Pikoli advised Commissioner Selebi and the Directors General that he would approach the Minister of Justice to get guidance on the serious misunderstandings about the role of the task team which compromised the functioning of the team. [238].

28.45 During this same period, on 5 January 2007, Minister Mabandla issued a press statement expressing the need to develop a policy on presidential pardons for prisoners who alleged that their offences were politically motivated. She explained that the matter was complex, novel and required a “political solution”. The Minister noted that the pardons were necessary

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to address situations where applicants had not applied for amnesty from the TRC because their political parties did not support the TRC; applicants had pleaded ignorance of the TRC processes; or crimes committed by applicants after the cut-off date for TRC amnesty. [239].

28.46 Also around this period, the former Minister of Police, Adriaan Vlok and the former Commissioner of Police, General van der Merwe made representations to Adv Pikoli admitting to authorizing the murder of Reverend Chikane and requested not to be prosecuted in light of the disclosure. They however refused to make full disclosure. Adv Pikoli thus declined to grant them immunity from prosecution – in terms of the prosecution guidelines. Their prosecution thus commenced. [241].



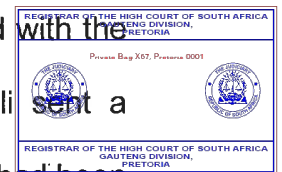
28.47 Adv Pikoli then met with then Minister Mabandla. The interaction between them is addressed later in this affidavit.

28.48 Adv Pikoli and Mr Ackermann appeared before the Justice Portfolio on 3 May 2007. According to the Calata applicants, the minutes of this meeting reflect Adv Pikoli's frankness about what was stopping prosecutions of the TRC cases. In terms of the minutes, Adv Pikoli highlighted that whenever there was an attempt to charge members of former police services, there was political intervention. While on the other hand, families of victims were pressing for prosecution. The Calata applicants contend that the statements by Adv Pikoli demonstrates his frustration that former generals seemed able to exert influence and were able to engineer political intervention when their people were pursued. They also allege that failure by the justice Portfolio Committee and across the political spectrum to call

for an independent inquiry into the alleged violation of the rule of law at that stage is shameful.[251].

28.49 The Prosecution Policy was challenged in the High Court by family victims in July 2007 and it was argued that the policy was designed for the sole purpose of guaranteeing impunity for apartheid-era perpetrators. The application was opposed by the Minister of justice and the NDPP. [252].

28.50 Also in July 2007, a plea and sentence agreement was reached with the accused in the Chikane attempted murder matter. Adv Pikoli sent a memorandum to the Justice Minister informing her that the case had been set down for hearing on 17 August 2007, for confirmation of the plea and sentencing agreement. This occurred on 17 August 2007 and after pleading guilty, the accused were convicted and suspended sentences were imposed. [253-255].



28.51 The Calata applicants allege that the prevailing view by Adv Pikoli and Mr Ackermann was that the NPA would have preferred a full prosecution as this would have produced greater truth and accountability. But Adv Pikoli's concern at the time was that the "political headwinds" were too strong and he feared that police investigations into the matter would have compromised the case. It was clear to Adv Pikoli, so the allegation goes, that the government – especially the then Minister of Justice (Ms Mabandla) – did not want the NPA to prosecute the accused in the Chikane case. [258.]

#### **Alleged conduct 4: suspension of Adv Pikoli**

28.52 After the convictions in the Chikane matter, a newspaper article was published on 19 August 2007 in which it was claimed that the NPA was preparing to prosecute ANC leaders. The article was based on a memorandum drafted by Mr Ackermann four years prior, however, the note was forged to suggest that it was recently made. The NPA released a press statement on 21 August 2007 and denied the allegations in the article. [260].

28.53 According to the Calata applicants, several interventions followed the release of this article which point to the extent of political interference. First, Adv Pikoli was asked to relieve Mr Ackermann from the TRC cases by the DG, Department of Justice. He declined to do so. Second, Adv Pikoli was summoned to a meeting of the subcommittee of the Justice, Crime Prevention and Security Cabinet Committee on Post TRC matters on 23 August 2007. Cabinet Ministers in attendance included the Minister of National Intelligence Services, Minister Ronnie Kasrils, Minister Mabandla and Minister Skweyiya. [262-263]. According to Adv Pikoli, those in attendance at the meeting demanded answers from him about the TRC prosecutions. [264].

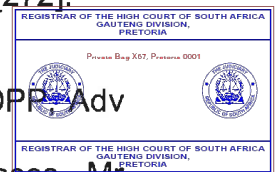
28.54 It is alleged that Minister Mabandla and Adv Pikoli interacted during the meeting and thereafter. I address that interaction later in this affidavit. I mention, however that during their interaction, Adv Pikoli confirmed that the NPA was not investigating “the 37 ANC leaders including the President”. [267.]



28.55 I suspended Adv Pikoli from office on 23 September 2007 and announced the establishment of the Ginwala Enquiry into his fitness to hold office. [276]. One of government's complaints against Adv Pikoli was his handling of the TRC cases in that he did not demonstrate an appreciation of the public interest issues that were mandated by the prosecution policy. [278].

28.56 The Calata applicants observe that Adv Pikoli attested that the decision to suspend him was influenced by his approach in the TRC cases. [272].

28.57 Mr Ackermann was allegedly then summoned by the acting NDPP, Adv Mpshe, and relieved of his duties in relation to the TRC cases. Mr Ackermann also attested that Adv Mpshe no doubt received a political instruction to remove him from the cases. [271].



28.58 The Calata applicants contend that the establishment of the Ginwala Enquiry and removal of Mr Ackermann marked the start of years of complete inactivity in the TRC cases [275]. SAPS declined to further investigate the TRC cases pending the finalization of the enquiry. [277].

### **Conduct 5: special process for handling pardons**

28.59 At a joint Parliamentary session on 21 November 2007, I announced a special process for handling pardon requests from individuals convicted of politically motivated offenses, who had not been denied amnesty by the TRC. I am alleged to have framed this initiative as an effort to resolve the TRC's "unfinished business". [289 The window period for submitting requests was 15 January 2008 to 15 April 2008 and was subsequently extended to May 2008. [291-293].

28.60 The Calata applicants note that some of the applicants who were recommended for pardon to former President Motlanthe included the accused in the Chikane matter and AWB members. [296].

28.61 The pardon process was criticised by civil society organisations, for being opaque and excluding the victims. Ultimately, (in 2009) the pardons' process was interdicted by court and in 2010 the Constitutional Court later ruled that no pardon could be issued without first affording the victims a hearing. [300-301].



28.62 By this time, I had resigned as President.

### **The Calata applicants place me at the centre of political interference**

29. It is apparent from the allegations against me in the founding affidavit (which are not exhaustively and comprehensively summarised here), that the Calata applicants' case for political interference in the investigation and prosecution of the TRC cases, or even their so called suppression, is based on my alleged conduct, and the conduct of various officials in my administration during my tenure as Deputy President and President (i.e from 1998 to 2008). The Calata applicants state in their papers that my administration played a central role in what they allege to have been a violation of the rule of law, human rights, as well as other provisions in the Constitution and criminal conduct. They allege that this unlawful conduct was perpetuated after I left office.

30. The Calata applicants squarely allege that while publicly rejecting a general amnesty, I endorsed special arrangements to accommodate

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*S.M.*

perpetrators who had not participated in the TRC process, or who were denied amnesty, in order to shield myself against prosecution.

31. They have placed me at the centre of the political interference and then allege that I deny such involvement. They allege further that my denial conflicts with the clear suppression of TRC cases that occurred under my administration. They assert that an independent commission of inquiry is required to “consider and test the veracity of the denials of former President Mbeki”. [401–405].



32. This makes it that I am the principal target of the commission of inquiry that they seek.

### **The motivation for my alleged interference**

- 32.1 The Calata applicants allege that the political interference stems from the ANC's failed attempts to obtain collective amnesty for apartheid era crimes.
- 32.2 The Calata applicants refer to a docket that allegedly implicates 37 ANC members, including me, apparently compiled by the FEL. This docket is said to contain sufficient evidence to support criminal charges against ANC officials, including charges of terrorism against me. The FEL, so the allegation goes, has refused to hand over the docket to the prosecuting authority and has claimed that it would only be used if apartheid era officials were targeted for prosecution. [397].

### **The allegations against Ms Mabandla**

*TM* *S.M*

33. As against Ms Mabandla, the applicants allege that:

33.1 On 5 January 2007, she issued a press statement highlighting the need to develop a policy on presidential pardons for prisoners claiming their offenses were politically motivated. [239].

33.2 On 6 February 2007, she met with Adv Pikoli and appeared to have had the impression that he (Adv Pikoli) had previously agreed not to proceed with the TRC cases. [242].

33.3 She sent a letter to Adv Pikoli on 8 February 2007. The letter was titled "TRC MATTERS," and in it, she expressed surprise at media reports suggesting that the NPA intended to proceed with prosecutions. She is further alleged to have stated in the letter, that: *"I must advise you at the outset that the media articles alleging that the National Prosecuting Authority will go ahead with prosecutions have caught me by surprise. In our discussions, you briefly mentioned to me that the NPA will not go ahead with prosecutions"*. [243].



33.3.1 The *Calata* applicants allege that in response, Adv Pikoli addressed a memorandum to Ms Mabandla, in which he *"set out the history behind the policy to the TRC cases and to inform the Minister of the problems experienced in implementing this policy"*. [246].

33.3.2 It is further alleged that Ms Mabandla never responded to Adv Pikoli's memorandum, nor did she deny that her department was involved in improper interference with the NPA's work.

33.4 The *Calata* applicants allege further that in his affidavit in *Nkadimeng 2 (FA22)*, Adv Pikoli stated that he was shocked by the absence of an immediate response by Ms Mabandla to his memorandum, given the serious concerns he had raised and the fact that obstructing the prosecution authority's work is a criminal offense. To him (so the allegation goes), Ms Mabandla's silence indicated that she was content with the deadlock between the NPA, the Department of Justice, SAPS, and National Intelligence Agency ("**NIA**"), effectively allowing the suppression of TRC cases to continue [249].



33.5 It was clear that the government, especially the Minister of Justice, did not want the NPA to prosecute those implicated in the Rev Chikane case. [258].

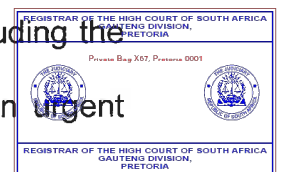
33.6 After a newspaper article on the issue was published, Adv Pikoli was summoned to a meeting of the subcommittee of the Justice, Crime Prevention, and Security ("**JCPS**") Cabinet Committee on Post-TRC matters on 23 August 2007. The meeting was attended by several cabinet ministers, directors-general, and Adv Selebi. Among the ministers present were Ronnie Kasrils (Minister for National Intelligence Services), Ms Mabandla, and Minister Skweyiya. [262].

33.7 It is alleged that during the meeting, it was immediately demanded that Adv Pikoli provide answers about the TRC prosecutions – and to especially explain why the NPA was instituting investigations in relation to a forged memorandum. Ms Mabandla instructed Adv Pikoli to halt the investigation, to which Adv Pikoli responded that the NPA

was bound by law to continue with the prosecutions of individuals who did not apply for or were refused amnesty. [264].

33.8 Ms Mabandla sent a fax to Adv Pikoli on 28 August 2007, complaining that she had not been advised of the decision to investigate (*the 37 ANC leaders*), and wanted to know the basis thereof. [265].

33.9 Adv Pikoli apparently responded and confirmed that there was no investigations by the NPA “against the 37 ANC leaders including the President”. [267]. He concluded the letter by requesting an urgent meeting with the Minister. [269].



33.10 According to the Calata applicants, Ms Mabandla did not respond to the meeting request. [270] Instead, Adv Pikoli was suspended and the Ginwala enquiry into his fitness was established.

34. It is clear that the allegations against Ms Mabandla suggest that as Minister of Justice, she sought to obstruct the investigation and prosecution of TRC cases.

#### **REASONS FOR SEEKING TO INTERVENE**

35. I repeat what I have stated above in summary regarding our direct and substantial interest in the subject matter of the main application. What I say below does not detract from what I have already said.

36. Ms Mabandla and I beg the court’s leave to intervene in the main application:

36.1 to protect at the very least our respective right to dignity, which is protected by section 10 of the Constitution; and to have our dispute of the Calata applicants' serious and damaging allegations against us determined fairly in accordance with section 34 of the Constitution. This, we intend to do by challenging the tarnishing allegations against us, that underpin the *Calata* applicants' request for: (a) declarators of political interference in the investigation and prosecution of the TRC cases; and (b) constitutional damages.



36.2 Permitting us to place our versions before court would add to the body of evidence that would have to be evaluated and tested, in order for that court to determine the true factual position, apply the law to the correct facts, and thus issue the correct outcome in the circumstances, as well as appropriate relief, including that regarding the establishment of a commission of inquiry.

36.3 Absent our versions, the allegations in the founding affidavit would be taken as given – there would be no contrary version before court. There would also be no other opportunity to challenge the *Calata* applicants' versions, including by way of appeal.

### **SUMMARY OF FACTS TO BE PROVIDED**

37. The allegations against us, and the TRC cases generally, in the founding affidavit are disjointed, lack context, are incomplete and materially false.
38. If permitted to intervene in the main application, we will address several topics including:

*Tom* *SN*

38.1 The reason behind the TRC, and its role in the transition to democratic rule in South Africa;

38.2 The events post the TRC;

38.3 The position of the "ANC 37" in the context of the TRC and their potential prosecution;

38.4 My, and Ms Mabandla's role/interactions (respectively) with the NPA regarding the TRC cases;

38.5 The Rev Chikane matter; and

38.6 The suspension of Adv Pikoli.



39. In what follows, I provide a broad overview of these topics but hope to have the opportunity to address the specific allegations of interference raised by the *Calata* applicants in due course and once we have been permitted to intervene. The allegations in the *Calata* application span a significant historical timeframe and will require time to deal with.

### **The TRC and transition to democracy**

40. The TRC was established with the important aim to help ensure that the truth was told about human rights violations during the larger part of the apartheid years, with the violators being exposed and given the opportunity publicly to apologise. The process provided an opportunity to those who had committed crimes in the context of those violations of human rights to apply for amnesty, apologise to those they had harmed, and gave an opportunity to the latter to confront the wrong-doers. The TRC

retained the power to deny such amnesty and refer matters to the relevant authorities for prosecution; and order for reparations to be paid to those who had been victim to the crimes indicated above. In the context of the foregoing, the ANC in particular was accepted as a representative of those who had been oppressed and against whom various crimes had been committed.

41. The 1995 Promotion of National Unity and Reconciliation Act which created the TRC contains very important provisions which help to explain the importance of the TRC for the transition to democracy. Ultimately, the TRC had a critical place and was vitally important in the historic endeavour to build the new post-apartheid South Africa.



42. Some time while the TRC was continuing its work, a group of former senior officers of the SAP and the SADF, including Generals, requested a meeting with the ANC concerning matters relevant to the TRC. I, together with some other members of the ANC Committee tasked to deal with the TRC, met these former SAP and SADF Officers. They told the ANC delegation that their view with regard to how the previous (apartheid) government should approach the TRC was as follows, that:

42.1 the former National Executive (Cabinet) should approach the TRC to inform it of the decisions it had taken to advance its policies, as well as defend both the government and the apartheid system as a whole;

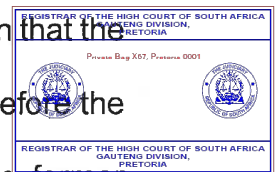
42.2 the Senior Officials serving this Cabinet, like the former SAP and SADF Generals, should then approach the TRC to explain what they

*Th.* 36  
*G.N.*

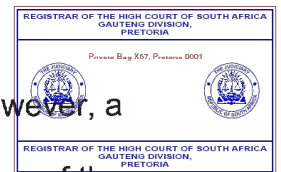
did to implement the policies handed down to them by this Cabinet, including the instructions they had given to the subordinate officials; and,

42.3 these Subordinate Officials should then also approach the TRC to explain what they did to implement the directives handed down to them by the Senior Officials/Generals.

43. The former Senior Officers/Generals informed the ANC delegation that the former Cabinet, led by Mr F.W. de Kerk, had refused to appear before the TRC as suggested above. This was the reason why they (the former Senior Officials/Generals) had not volunteered to appear before the TRC. They thought it was unfair to leave only the Subordinate Officials to appear before the TRC to explain their actions. Some of these actions would be violations of human rights, requiring amnesty, presented without the context which would have been provided by the submissions to the TRC of the former Cabinet members and Senior Officials/Generals.
44. On the back of this, the former Senior Officials/Generals requested that the ANC should approach Mr de Klerk and his former colleagues to appear before the TRC for the purpose indicated above.
45. In response to this request, the ANC decided that a collective of selected members of its leadership should approach the TRC to make a submission equivalent to the submission expected of the former Cabinet, formerly led by Mr de Klerk.

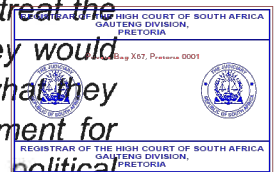


46. The ANC leadership then handpicked the members of its leadership who would be part of the collective to approach the TRC, taking into account persons who would have been in relevant leadership positions during the period in question.
47. This is the ANC 'Group of 37' which applied for amnesty on the basis that it had decided the policies which had been implemented by lower organs of the ANC.
48. The TRC first granted a general amnesty to the 'Group of 37'. However, a court overturned this TRC decision on the basis that the application of the 'Group of 37' did not meet the requirements of the TRC Act, which required that those who applied for amnesty should indicate in full the specific offenses for which they sought amnesty.
49. The members of the 'Group of 37', individually and collectively, were not practitioners at the implementation level equivalent to the Subordinate Officials mentioned earlier and therefore had committed no specific offences requiring amnesty in terms of the TRC Act.
50. The final TRC response put paid to the ANC's attempt to set an example for the former Cabinet, which, if we had succeeded in our application, would have given us the moral authority to approach the former Cabinet to follow our example.
51. This, in turn, would have opened the way for the former SAP and SADF Senior Officials/Generals to approach the TRC.



52. The ANC understood and accepted the rationale behind the ultimate rejection of the amnesty application of the 'Group of 37'. It saw no need to take the matter further, including the original intention to persuade.
53. However, in my speech on 15 April 2003, when I tabled the TRC Report before the Houses of Parliament, I said:

*"Yet we also have to deal with the reality that many of the participants in the conflict of the past did not take part in the TRC process. Among these are individuals who were misled by their leadership to treat the process with disdain. Others themselves calculated that they would not be found out, either due to poor TRC investigations or what they believed and still believe is too complex a web of concealment for anyone to unravel. Yet other operatives expected the political leadership of the state institutions to which they belonged to provide the overall context against which they could present their cases: and this was not to be."*



54. In the same speech I quoted what the TRC had said about some who 'did not participate in the TRC'. In this regard, the TRC said:

*"Others did not wish to be portrayed as a 'victim'. Indeed, many said expressly that they regarded themselves instead as soldiers who had voluntarily paid the price of their struggle... Many have expressed reservations about the very notion of a 'victim', a term which is felt to denote a certain passivity and helplessness... Military operatives of the liberation movements generally did not report violations they experienced to the Commission, although many who were arrested experienced severe torture. This is in all likelihood a result of their reluctance to be seen as 'victims', as opposed to combatants fighting for a moral cause for which they were prepared to suffer such violations. The same can be said for most prominent political activists and leadership figures... The Commission did not, for example, receive a single Human Rights Violation statement from any of the Rivonia trialists."*

55. We accepted these observations as correct.

*Am.*  
39  
*S.H.*

### Events post the TRC

56. The TRC referred to the NPA for further investigation and prosecution the cases of some of those to whom amnesty was denied. The Government accepted this TRC decision, which did not require any intervention on the part of the National Executive. Accordingly, the National Executive assumed that the NPA would act as requested by the TRC.

### The NPA and the TRC cases

57. What I said in my speech on 15 April 2003 as I tabled the TRC Report before the Houses of Parliament reflects and represents exactly this philosophical outlook. In this context, I said, for instance:

*"However, as part of this process and in the national interest, the National Directorate of Public Prosecutions, working with our intelligence agencies, will leave its doors open for those who are prepared to divulge information at their disposal and to co-operate in unearthing the truth, for them to enter into arrangements that are standard in the normal execution of justice, and which are accommodated in our legislation.*

*"This is not a desire for vengeance; nor would it compromise the rights of citizens who may wish to seek justice in our courts.*

*"It is critically important that, as a government, we should continue to establish the truth about networks that operated against the people. This is an obligation that attaches to the nation's security today; for, some of these networks still pose a real or latent danger against our democracy. In some instances, caches of arms have been retained which lend themselves to employment in criminal activity."*

58. In the discussion on the TRC to which I have referred, I mentioned that South Africa is currently confronted by the interventions of groups of South



Africans who are determined to subvert the process of the development of the South Africa visualised in our country's Constitution.

59. It would earn our country and people huge dividends if ways and means could be found, including *“(leaving the NPA) doors open for those who are prepared to divulge information at their disposal and to co-operate in unearthing the truth”*, which would end the destruction caused by a group I have characterised as counter-revolutionary.

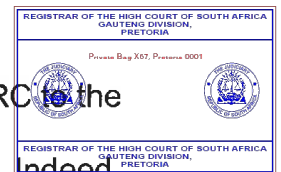
60. None of what I said in 2003 related to the cases referred by the TRC to the NPA, which the latter was expected to investigate and prosecute. Indeed, during the 2003 speech I also referred to what might, in future, be cases similar to those handled by the TRC and said:

*“Given that a significant number of people did not apply for amnesty, what approach does government place before the national legislature and the nation on this matter? Let us start off by reiterating that there shall be no general amnesty.”*

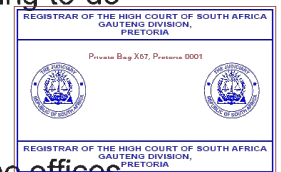
### **The Rev Chikane matter**

61. I deny that I interfered with any aspect concerning Rev Chikane's case. I will provide further particulars of what transpired – this requires a conversation with Rev Chikane, which I have not been able to have in the period of time I had to prepare this application.

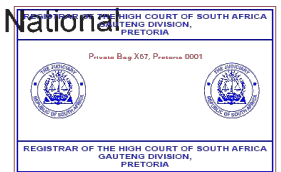
### **The suspension of Adv Pikoli**



62. Sometime before 2007, possibly in 2006, the NPA and the Directorate of Special Operations (DSO) or the 'Scorpions' started investigating then National Commissioner of Police, the late Jackie Selebi, for corruption.
63. During this investigation, the National Director of Public Prosecutions, Adv Pikoli, informed me that Mr Selebi and the Police Service as a whole were obstructing his work of investigating the National Commissioner. I must add that investigations regarding the National Commissioner had nothing to do with TRC cases.
64. He asked me to help him in this regard. I convened a meeting at the offices of Crime Intelligence to address the matter reported to him by the NDPP.
65. In addition, the meeting was attended by Adv Pikoli, National Commissioner Selebi, the heads of the DSO and Crime Intelligence, and Rev Frank Chikane, the DG in the Presidency.
66. I informed the meeting that everybody had a constitutional duty to help the NPA to carry out its work. Accordingly, National Commissioner Selebi and the SAPS had a duty to help the NDPP and the DSO to carry out their work.
67. I directed that the SAPS should therefore not obstruct the NPA in its work, including during its investigation of the National Commissioner. He also directed that if any problem arose in future between the SAPS and the NPA in the context of the investigation of the National Commissioner, those concerned should report this to DG Chikane, who would inform me.



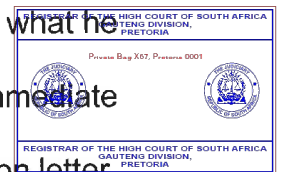
68. During the meeting it was agreed that the DSO should have access to any relevant Crime Intelligence files. It would read these at the Crime Intelligence offices rather than take them away to study in its own offices.
69. After this meeting, nothing was ever reported to me that the SAPS were obstructing the work of the NPA.
70. The next time I had to deal with this matter was when Adv Pikoli informed me that he had a Warrant to search the SAPS Headquarters and National Commissioner Selebi's house.
71. I then asked Adv Pikoli to meet me at the Official President's residence in Tshwane, Mahlambandlopfu. I also invited DG Chikane to attend the meeting.
72. During the meeting, Adv Pikoli confirmed that he had applied for and obtained the said Search Warrant. He said that he had to execute it immediately or within a week.
73. I told the Adv Pikoli that (in my view), the SAPS would oppose any attempt to search its Headquarters. I also said that so bad were the relations between the SAPS and the NPA and DSO that members of the SAPS might even open fire against the NPA search team. I therefore asked Adv Pikoli to give me a fortnight within which I would engage the SAPS and take all necessary measures to ensure that the NPA and DSO carry out their searches without problems.



74. I also told Adv Pikoli that I was surprised that he had sought a Search Warrant, knowing very well that I was ready to intervene with the SAPS, as I had already done successfully, to help the NPA.
75. Adv Pikoli did not explain why he had opted to get a Search Warrant.
76. However, he turned down my suggestion to delay executing the Search Warrant, undertaking to engage the SAPS so that the NPA could search the SAPS Headquarters with no opposition after a fortnight.
77. He insisted that he had to execute the Search Warrant within the short period he had indicated.
78. However, he conceded that indeed there might be a shoot-out at the SAPS HQ, saying that he based himself on what had nearly happened when a DSO unit had tried to search then Deputy President Jacob Zuma's residence at Forest Town in Johannesburg.
79. During this meeting, I also expressed concern that the NPA had decided to grant immunity to the assassins of Brett Kebble as part of the process of prosecuting National Commissioner Selebi.
80. I was of the view that both the National Commissioner and the assassins should be charged for whatever offence they were responsible, without wilfully exempting people who had committed murder.
81. Adv Pikoli responded by saying that it was normal to us 'small fry' to 'catch bigger fish', which is what the NPA was doing by granting immunity to the assassins.



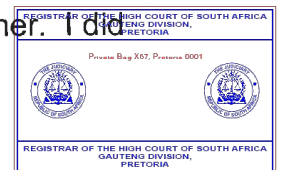
82. Otherwise no argument could persuade Adv Pikoli to move away from his determination to execute the Search Warrant as he had indicated.
83. I then told Adv that I could never allow the situation where organs of State engaged each other in a shoot-out.
84. I said that to stop the NDPP from engaging in the reckless action of marching into the SAPS HQ because he was so authorised by a Search Warrant, and given that I had no power to instruct the NDPP about what he should do, my only recourse was to suspend the NDPP with immediate effect. I then went to my office in the residence, typed the suspension letter, and handed it to Adv Pikoli. After reading the letter, Adv Pikoli said that what I had done had 'lifted a lot of weight from his shoulders'.
85. I then appointed Adv Mokotedi Mpshe to the post of Acting NDPP. The Acting NDPP followed up the investigation of National Commissioner Selebi. When he was ready to arrest the National Commissioner, he informed me.
86. I engaged the SAPS as I had suggested to Adv Pikoli, again urging the National Commissioner to cooperate with the NPA.
87. I also dealt with the consequences of the impending arrest of the National Commissioner, including the appointment of an Acting National Commissioner.
88. National Commissioner Selebi surrendered himself to the relevant authorities when he was so requested by Acting NDPP Mpshe.



89. Contrary to what some have falsely suggested, this example shows two things. These are that:

89.1 even I had no power to instruct the NDPP about what he should do;  
and,

89.2 in a case which involved a very senior member of the police, I, on behalf of the National Executive, intervened practically to help the NPA carry out its constitutional and statutory tasks in a safer manner. I did not intervene to stop the NPA from carrying out its tasks.



90. I find it very strange indeed that the same President is accused of having suddenly developed the capacity to stop the NPA from carrying out its duties, acting to protect people who had been part of the apartheid machinery from prosecution for their crimes committed in defence of the apartheid crime against humanity.

91. The above demonstrates that the suspension of Adv Pikoli had nothing to do with the TRC cases.

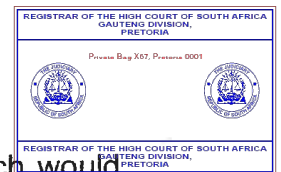
### **The TRC cases post Adv Pikoli**

92. The position of the National Executive with regard to the cases referred by the TRC to the NPA remained the same both while Adv Pikoli was NDPP and afterwards.

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*E.M.*

93. I addressed a Joint Sitting of the Houses of Parliament on 21 November 2007, to present a proposal about Presidential Pardons. Of course, the Constitution grants the President the power to grant pardons.

94. In this regard, the situation was that as I addressed Parliament, the Government was in possession of at least 1062 applications for presidential pardons by people who had been found guilty of offences which were allegedly committed with a political motive, arising from the conflicts of the past.



95. Further, there were ongoing political conflicts in the country which would undoubtedly increase the numbers of those who would request presidential pardons on the basis that the offences for which they were convicted were committed with a political motive, in conflicts which were a legacy of the apartheid years.

96. Necessarily, the President could not ignore these requests but was obliged to apply his mind to each one of them.

97. However, I was very mindful that we should do everything possible to respect the TRC. Accordingly, I said:

*"In dealing with the challenges I have outlined, we have had to proceed with care, sensitive to the legacy of the TRC...It is important that our actions do not, in any way, undermine or suggest that any attempt is being made to undermine the TRC process and its outcomes..."*

*Tim*  
*G.M.* 47

*“In order to ensure that we do not undermine the work of the TRC, applicants who had applied to the Amnesty Committee established under the TRC Act and whose application for amnesty was refused, will not be considered for this Presidential pardon process.”*

98. I requested to address a sitting of both Houses of Parliament to make proposals about the exercise of the presidential pardon which would require ‘care and sensitivity to the legacy of the TRC’.

99. Specifically, I proposed that the parties represented in Parliament should each appoint a representative who would serve on a Reference Group on Presidential Pardons and which would advise the President on each of the requests for pardon for politically related offences which the President would refer to the Group.



100. I believed that this would help to address the required sensitivity to the legacy of the TRC, while still respecting the Constitutional provision enabling the President to grant pardons.

101. I promised Parliament that the Presidency and the Department of Justice and Constitutional Development would later present documents to the Reference Group detailing its support mechanisms and related questions.

102. Naturally I would study and correct such documents once the Government officials forwarded their drafts to me.

## CONCLUSION

Tom.  
S.N.

103. For all the reasons submitted above, it would be in the interests of justice to grant the intervention application as per the notice of motion.

104. It is contrary to South Africa's constitutional order for the court to decide issues raised in the *Calata* application, without affording Ms Mabandla and I the opportunity to be heard. An adverse finding without hearing us would offend against our right to equality (in section 9 of the Constitution), human dignity (in section 10 of the Constitution) and access to court (in section 34).

If the common law does not recognise our right to intervene in the present circumstances, it should be developed to recognise such right.



105. Once intervention is granted, Ms Mabandla and I request the Court to afford us a fair opportunity to file an answering affidavit in which we will address all the relevant allegations in the founding affidavit. Given the extensive historical nature of the allegations of fact made, and the extensive annexures on which the applicants rely, it will take significant time to put together a proper answer to the allegations. This could not be done in the time afforded us to bring this application. There are also other relevant and historical material that may have to be obtained, in some cases from archives, to respond properly to the allegations made. Various persons will need to be consulted also to put together a proper answer to the allegations.

**WHEREFORE**, the applicants pray for an order as set out in the notice of motion.

  
**THABO MVUYELWA MBEKI**

I certify that the deponent has acknowledged that the deponent knows and understands the contents of this affidavit, which was signed and deposited before me at JOHANNESBURG on this the 31 day of March 2025, and that the provisions of the regulations contained in the Government Notice R1258 of the 21<sup>st</sup> of July 1972, as amended, and Government Gazette Notice R1648 of the 19<sup>th</sup> of August 1977, as amended, have been complied with.



**COMMISSIONER OF OATHS**

FULL NAMES: **Goodman Ntandazo Vimba**  
 CAPACITY: **Practising Attorney  
 Commissioner of Oaths**  
 ADDRESS: **1st floor 357 Rivonia Boulevard  
 Rivonia  
 Sandton, 2128  
 Tel: 011 238 7991**



*Tim*

COPY

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# Office of the National Director of Public Prosecutions



The National Prosecuting Authority of South Africa  
Igunya Jikelele Labeshutshisi boMzantsi Afrika  
Die Nasionale Vervolgingsgesag van Suid-Afrika

24 January 2008

Ms B Mabandla, MP  
Minister of Justice & Constitutional Development  
Private Bag X276  
PRETORIA  
0001

Dear Minister

## REPRESENTATIONS: REV FRANK CHIKANE

As requested, find herewith my response to the complaints raised by Rev Chikane in his letter, dated 22 October 2007, addressed to you. I intend dealing with these matters *seriatim* as I have numbered the paragraphs 1 to 12 (a numbered copy of Rev Chikane's letter is attached hereto for ease of reference as **Annexure "A"**).

### Ad par 1

I have no comments.

### Ad par 2

I have no comments.

### Ad par 3

1. The officials who dealt with post-TRC matters during the relevant period were:

- (i) Adv Vusi Pikoli;
- (ii) Dr MS Ramaite;
- (iii) Adv AR Ackermann; and
- (iv) Adv MC Mhaga.

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2. As a result of this letter and the prominent role played by Adv Ackermann, I have deemed it prudent to relieve him from all TRC-related duties since November 2007.
3. As you are aware, Adv Pikoli has been suspended and his future role is presently the subject of the Ghinwala Inquiry.
4. I have decided that all future post-TRC investigations and prosecutions be managed by Dr Ramaite, Adv Mhaga and the TRC Task Team.

Ad par 4

Both Advocates Ackermann and Mhaga deny that there was an acrimonious argument. See also par 5 *infra*.

Adv Ackermann admits that he had some concerns about the Guidelines and in a number of official memoranda, raised his concerns on the constitutionality thereof. Despite reservations, he diligently applied the criteria as stipulated in the Guidelines. With the wisdom of hindsight, it appears that there was some merit in Adv Ackermann's reservations. Indicative thereof is the institution of a civil action in the High Court, challenging the validity of the TRC Guidelines. (See ***Nkadimeng & Others v the NDPP and the Minister of Justice & Constitutional Development*** (Case No 32079/07).

Ad par 5

1. The gravamen of Rev Chikane's complaint is his perception of being used as a pawn in a battle between Government and the NPA. No mention is made of any specific Government department.
2. Rev Chikane further states that he was presented with a pre-drafted letter, which in his view was compiled in such a manner as to enhance the NPA's position in this so-called battle.
3. Adv Ackermann confirms that a pre-drafted letter was indeed presented to Rev Chikane after the former had explained the letter's *rationale* to Rev Chikane.
4. It is deemed necessary to briefly explain the background which led to the presentation thereof to Rev Chikane:
  - (i) In December 2004, prior to the drafting of the TRC Guidelines, Adv Ackermann had a consultation with Rev Chikane where *inter alia* the intended prosecution was

discussed. During this consultation, Rev Chikane fully agreed to the said prosecution.

- (ii) During December 2005, the TRC Guidelines came into operation. In terms of par A.4 thereof, the views of a victim are one of the factors to be taken into consideration prior to the institution of a prosecution.
- (iii) The TRC Guidelines provide for perpetrators to make representations to the NDPP. The perpetrators in *S v Van der Merwe & Others* submitted representations through their legal representative, which were dealt with by the NDPP and Dr Pretorius. Adv Ackermann was not involved in this process at all.
- (iv) After the conclusion of the process, Adv Pikoli instructed Adv Ackermann to proceed with the prosecution in terms of the Guidelines. Adv Pikoli also informed Adv Ackermann that Rev Chikane had been consulted and had intimated that the legal process should take its course.
- (v) During a TRC Task Team meeting thereafter, the representative of the SAPS informed the meeting that according to National Commissioner Selebi, Rev Chikane was against the intended prosecution.
- (vi) After Adv Ackermann had once again enquired from Adv Pikoli as to Rev Chikane's attitude to the intended prosecution, Adv Pikoli then once more contacted Rev Chikane, who apparently confirmed his previous views on the matter. Adv Pikoli thereafter instructed Adv Ackermann to immediately schedule a consultation with Rev Chikane and to arrange for Adv Mhaga to accompany him to this consultation.
- (vii) In order to prevent any further confusion regarding Rev Chikane's attitude as far as the intended prosecution was concerned, Adv Ackermann deemed it imperative to obtain his written views.
- (viii) Since Rev Chikane had conveyed his attitude to Advocates Pikoli and Ackermann on numerous occasions, the latter took the liberty of drafting a letter in Rev Chikane's name (a copy of which is attached hereto as **Annexure "B"**.)

- (ix) Upon presentation of the letter, Rev Chikane refused to append his signature thereto and declined the suggestion to formulate his views in writing.
5. With regard to Rev Chikane's alleged claims of threats by Adv Ackermann during this meeting, the latter vehemently denies having threatened Rev Chikane in any manner. On the contrary, Adv Ackermann is of the view that he had a very pleasant meeting with Rev Chikane. Adv Mhaga, who was at all times present, also denies having witnessed any threats during the meeting. Adv Mhaga is further of the view that the interaction between the parties was conducted in a very amicable manner. Both Advocates Ackermann and Mhaga are of the view that no animosity was revealed by either of the parties during the meeting.

Ad par 6

Adv Ackermann admits not having consulted with Rev Chikane on the details of the Plea & Sentence Agreement. Adv Chikane was however informed of the proposed suspended sentences.

However, in various newspaper articles, after the conclusion of the trial, Rev Chikane publicly expressed his satisfaction with the proceedings (Annexure "C").

With regard to the concerns raised by Rev Chikane relating to the stated policy of the UDF, it is important to note that in Plea & Sentence Agreements, the version of an accused person also has to be incorporated.

The following *dicta* in **S v Esterhuizen 2005 (1) SACR 490 at 494 e – h** is apt in explaining plea bargaining in terms of Section 105A of Act 51 of 1977:

- "e       ....  
*Indeed it will often be so, once plea negotiations are entered into, that the accused's defence will also be known to the State. The contents of the State's dockets and the strength of the State's case will be known to the accused.*
- f       *It must be so that substantial room for an adjustment of the charges (including the withdrawal of certain charges and the possible acceptance of competent verdicts on other charges) is open to the State. It must also be clear that in the give and take of negotiations, an accused person may tender in the negotiation to plead guilty to a charge of which that accused person is guilty, but in respect of which the State may have had considerable difficulty in achieving a conviction.*
- g

*In return for the concession of a plea of guilty to a charge difficult to prove, it must be so that the Legislature has envisaged that the bargaining mechanism would bring home a result which satisfies the interests of justice. These would be that where a crime has been committed a conviction has been achieved. The price may be that the sentence which would normally flow from the commission of such a crime is lower than might otherwise have been imposed. This does not mean that justice has not been achieved."*

Ad par 7

It is incorrectly stated by Rev Chikane that his background had been presented as though he held the position of General-Secretary of the SACC and Vice President of the UDF simultaneously.

Par 28 of the English version of the Plea & Sentence Agreement states:

*"... he was, inter alia the Secretary General of the South African Council of Churches and the Vice President of the United Democratic Front".*

The use of the term "inter alia" clearly denotes that Rev Chikane held these two positions at a particular point in time in his life and not simultaneously.

Ad par 8

Withdrawal of Count 2

Count 2 was included as a legal tactical strategy to *inter alia* have key evidence admitted should the accused have pleaded not guilty. In any event, the available evidence which the prosecution relied on is in the public domain (See **S v Wouter Basson**).

The list

I am informed by Adv Ackermann that extensive attempts have been made to obtain knowledge of the contents of the list. He even went as far to use it as a bargaining tool not to accept any plea agreement. All avenues to obtain the list have been explored. Matters of this nature would not form part of a plea agreement.

The legal representative of the accused in the plea agreement categorically stated that none of the accused recalled the listed names.

### Discussions with Smit and Basson

Basson has on numerous occasions publicly declared his innocence, most recently, during his hearing at the Medical Council.

Discussions were held between Smit's legal representative and Adv Ackermann. Smit denied any knowledge or involvement in these crimes.

One of the conditions negotiated by Adv Ackermann and which forms part of the Plea Agreement in *S v Van der Merwe & Others* is that the accused had undertaken to testify against Smit.

In August 2007, Adv Ackermann requested the NDPP's authorisation to proceed with an investigation against Basie Smit (See **Annexure "D"**).

### SADF Involvement

Dr Pretorius had extensive consultations with members of the SADF in this regard.

### Ad par 9

The NPA is in full agreement with the sentiments expressed by Rev Chikane, save for the last sentence.

### Ad par 10

A further complaint raised by Rev Chikane was that "*the Court was completely white, from the Judge to the Prosecutors, defence lawyers and the accused.*"

This is unfortunate, but the following should be noted:

- (i) The prosecutor, Adv Ackermann, was appointed and directed to do these cases by the former NDPP, Mr B Ngcuka. This was later endorsed by Adv Pikoli.
- (ii) The Judge President, the Honourable Mr Justice B Ngoepe, appointed the judge who presided over the trial.
- (iii) The accused had a right to be represented by a legal representative of their own choice.
- (iv) The prosecutor had no control over who the accused were.

With regard to the complaint of the proceedings having been conducted in Afrikaans, Adv Ackermann took the following pro-active measures in ensuring that the court proceedings would be accessible to the gallery:

The indictment, sentence and plea agreement as well as his address to the Court were translated into English and 40 copies thereof were distributed to all stakeholders prior to the commencement of the trial.

It would have been prudent for a court interpreter to be present to translate the proceedings. This would have made the proceedings more victim-friendly.

Ad par 11

I do not have any comments on Rev Chikane's opinion in this regard, save to state that the NPA did not act unilaterally.

Yours sincerely



ADV MJ MPSHE SC  
ACTING NATIONAL DIRECTOR PUBLIC PROSECUTIONS

TRC File  
/Z56 forms

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## INTERNAL MEMORANDUM

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**TO:** ADV MJ MPSHE SC  
ACTING NATIONAL DIRECTOR OF PUBLIC  
PROSECUTIONS

**FROM:** ADV RC MACADAM  
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS  
AND DEPUTY HEAD: PCLU

**SUBJECT:** TRC CASES

**DATE:** 9 JUNE 2008

Dear Adv Mpshe

The NPA Annual Plan required of the PCLU that it formulate an action plan whereby TRC cases would be promptly and effectively disposed of. More specifically, I was appointed to manage this plan.

As a consequence thereof, Adv Ackermann SC and I met firstly with Adv Mzinyathi SC and thereafter with Dr Ramaite SC. Dr Ramaite SC agreed that I should attend the Task Team meetings as well as any strategic discussions involving himself and you. I also recommended that Dr Bukau be involved so as to assist Adv Mhaga on an operational level.

Dr Ramaite SC is not available for the remainder of the month. There is however one matter which requires urgent attention, namely the *Pebco 3* prosecution. The accused in this matter appeared on indictment in the Port Elizabeth High Court in 2004. On every occasion that the matter has been in court, it has been postponed so as to enable the review of the refusal of the amnesty to be heard by the full bench of the TPD. Last year, the

matter was postponed as a final date to 5 August 2008. The responsibility for arranging the review lies with the DoJ&CD.

To date, no date for the hearing has been fixed, although Adv Ackermann SC and I were given the assurance that this would be either early or mid- 2008. Obviously, the Judge President would not be able to convene a full bench to hear the review between now and 5 August 2008. It would be enormously damaging for the Pebco 3 matter to be struck from the roll due to a failure on the part of a State department. In my view, the only way in which a postponement can be obtained is if a date for the review is set for the third or fourth quarter of this year's court sessions.


Although I intend taking up the matter with Tessie Bezuidenhout as a matter of urgency, I would recommend that you contact the Director General: DoJ&CD and request him also to ensure that the matter is expedited.

Another matter which requires attention is the status of the criminal investigation. As I recall, the matter was brought to court as a DSO investigation, but the investigators have now resigned. Consideration will have to be given to either appointing new investigators or to the matter being referred to SAPS. The reason why this is important is that the State may be required to demonstrate that it is ready to proceed with the prosecution on 5 August 2008.

Kind regards

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RC MACADAM

noted  
  
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BEFORE THE AMNESTY COMMITTEEAPPLICATIONS FOR AMNESTY  
IN TERMS OF SECTION 18 OF THE PROMOTION OF NATIONAL UNITY AND  
RECONCILIATION ACT, NO 34 OF 1995THE AMNESTY APPLICATIONS OF:

- |                                     |   |           |
|-------------------------------------|---|-----------|
| 1. SATHYANDRANATH RAGUNANAN MAHARAJ | - | AM5514/97 |
| 2. JOHANNES MODISE                  | - | AM5500/97 |
| 3. ANDREW MANDLA LEKOTO MASONDO     | - | AM5501/97 |
| 4. STEPHEN VUKILE TSHWETE           | - | AM5539/97 |
| 5. NGOAKO ABEL RAMATLHODI           | - | AM5538/97 |
| 6. GODFREY NHLANHLA NGWENYA         | - | AM5537/97 |
| 7. LAMBERT LEHLOHONOLO MOLOI        | - | AM5512/97 |
| 8. SNUKI JOSEPH ZIKALALA            | - | AM6515/97 |
| 9. PETER RAMOSHOANE MOKABA          | - | AM5504/97 |
| 10. B.P. GILDER                     | - | AM5510/97 |
| 11. B.L. MASETHLA                   | - | AM5511/97 |
| 12. M.N. PHOSA                      | - | AM5520/97 |
| 13. Z.P. TOLO                       | - | AM5526/97 |
| 14. T.M. MBEKI                      | - | AM5506/97 |
| 15. C. NQAKULA                      | - | AM5507/97 |
| 16. N.N. MAPHISA                    | - | AM5505/97 |
| 17. S.W. SIGXASHE                   | - | AM5536/97 |
| 18. B.A. MANCI                      | - | AM5535/97 |
| 19. R.S. MOPATI                     | - | AM5527/97 |
| 20. S.S. MAKANA                     | - | AM6158/97 |
| 21. T.M.G. SEXWALE                  | - | AM5533/97 |
| 22. J.K. NETSHITENZHE               | - | AM5532/97 |
| 23. P.R.F. MDLULI-SEDIBE            | - | AM5531/97 |
| 24. J.G. ZUMA                       | - | AM5530/97 |

25. J.K. NKADIMENG	-	AM5529/97
26. J.S. SELEBI	-	AM5528/97
27. A. NZO	-	AM6203/97

### DECISION

On the 9<sup>th</sup> of May 1997, 29 applications were submitted to the Amnesty Committee by the Truth and Reconciliation Commission desk of the African National Congress. The applications were lodged under cover of a notice dated 09 May 1997, indicating that the 29 applications were to be considered in terms of section 19 (5) (b) of the Promotion of National Unity and Reconciliation Act No 34 of 1995, which section empowers the Amnesty Committee to jointly consider individual applications. Further a declaration was submitted "in support" of the applications, and the applicants in turn referred to the declaration as the basis for their applications for amnesty. The content of this declaration is dealt with herein under.

On receiving the notice and 29 applications, individual files were opened, each registered separately in terms of the procedures of the Amnesty Committee. In the meantime further individual applications from various applicants other than those received from the ANC/TRC desk were received which also referred to the declaration, purporting to be an extension of the original joint applications of the applications of 29 applicants. These applications were administratively dealt with individually. After some time 37 applications, 21 of which included names of those mentioned above and 16 others not part of the original 29 were submitted by staff to a panel of the Amnesty Committee. The notice attached to the original 29 applications, appears not to have been placed on all the files. This resulted in 8 of the original 29 applications intended for joint consideration not being included amongst the 37.

The granting of Amnesty to the 37 and the subsequent court proceedings, are matters of history. What is however important, is that the court directed the Amnesty Committee "to consider afresh the applications for Amnesty of the third to thirty ninth respondents (the 37), including the issue of whether such applications properly comply with the relevant requirements of the Promotion of National Unity and Reconciliation Act. 34 of 1995".

The Committee decided to consider the 29 original applications received from the TRC desk of the ANC jointly and to consider the other 16 applications separately. It needs to be mentioned that a large number of further applications, similarly based and relying on the declaration, have since been lodged with the Committee. All of these will be considered separately.

The **declaration** on which the above applicants rely, reads as follows:-

"We, the applicants, having at various times between 1 March 1960 and 10 May 1994, as indicated below been members and leaders of the African National Congress (hereinafter referred to as the ANC), elected and /or appointed to serve in various structures including its highest organ, the National Executive Committee, do hereby make the following declaration:

1. During the said period, the ANC played the foremost role in the leadership of the struggle of the masses of our people for the end of the hateful system of apartheid, appropriately dubbed a crime against humanity by the international community.

2. In the course of our people's struggle, with the intent to induce the apartheid government of the National Party to abandon apartheid with its concomitant violent repression, and with the intent to achieve, bring about and promote fundamental political, social and economic changes in the Republic, the ANC, inter alia, established its military wing, Umkhonto weSizwe, through which it prosecuted an armed struggle.
3. At all material times, Umkhonto weSizwe operated under political authority, direction and leadership of the ANC.
4. Due to its peculiar circumstances, and the attacks mounted upon it by its adversary, the apartheid government, the ANC established various organs at various times such as the RC, PMC and a security organ NAT which at all material times also operated under its authority, direction and leadership.
5. Due to the circumstances which prevailed in the townships, in the early 1990s as a result of third force activities, the leadership of the ANC established and, in some instances encouraged the establishment of Self Defence Units (SDUs), which played a critical role in the defence of defenceless communities.
6. In the event, and to the extent that, any of the activities of any of the above mentioned institutions and structures including the SDU's could in any manner whatsoever be regarded as the kind of acts or omissions or offences envisaged in the Promotion of National Unity and Reconciliation Act, we collectively take full responsibility therefore applying for amnesty in respect thereof".

Following the court order, the Amnesty Committee made further inquiries from the ANC - TRC desk which represents at least the original 29 applicants and gave directions in respect of the attestation of the applications and requested for further particulars.

As a result of such enquiries, a letter dated the 10 November 1998 was received by the Committee from the ANC's Secretariat. The contents thereof are as follows:-

*Amnesty Committee  
Truth and Reconciliation Commission  
Cape Town*

*Dear Judge Khampepe*

*RE: ANC AMNESTY APPLICATION*

*As you are aware, during 1997, the ANC applied for amnesty for a group of 29 of its leaders.*

*The list was conveyed in a communication dated 9 May 1997 which apparently had a list of 30. However, the list contained a mistake in that the name of ZP Tolo appears twice on the list. (We attach the list for ease of reference).*

*The application was launched in keeping with the ANC commitment made in its submission to the Human Rights Violations Committee of the TRC that its leadership would take collective responsibility for the bona fide activities of members of the organisation.*

*The ANC consciously and deliberately took this position in order to contribute to the realisation of the purposes of the Promotion of National Unity and Reconciliation Act*

whose effectiveness was necessarily premised on the full cooperation of all who had been involved in the conflict that occurred during the period specified in the Act.

More specifically, the leadership of the ANC was determined then, as it is now, not to abandon or desert the thousand[s] of cadres who acted in furtherance of the struggle which it led, by suggesting that only they had an obligation to apply for amnesty, where necessary.

The leadership also hoped that by making this application, it would lead its members by example, encouraging those affected to follow in its footsteps.

The group selected to apply for amnesty was not the complete list of the leadership of the ANC during the mandate period of the ANC.

It was representative of a group of this leadership, chosen in a manner consistent with the definition of "the leadership of the ANC" by the Human Rights Committee.

This overall leadership is reflected in Appendix One of the May 1997 "Further Submission and Responses by the African National Congress to Questions Raised by the Commission for Truth and Reconciliation". (pp 34-56).

Accordingly, the list of 29 covered the period 1960-94 and included people who had been members of various committees of the ANC, from the NEC downwards.

Further, the group was also selected on the basis that, to the knowledge of the ANC, none of the people on its list had been involved in any individual action(s) for which they would require to apply for amnesty.

From the foregoing, it should be clear that "the 29" would not be able to answer any questions which sought to establish the specific acts for which they were applying for amnesty, since there are none.

It also seems clear that there are other leaders of the ANC who applied for amnesty on their own and in the same way as "the 29", who would also not be able to supply specific information, as they applied in furtherance of the collective responsibility assumed by the leadership of the ANC.

The ANC would be willing to join these to "the 29", after having established in each case that the persons involved meet the criterion that they have no need to apply for amnesty for any specific act.

Contrary to what has been falsely argued, the ANC never sought a "blanket amnesty" for leadership of the ANC, in bona fide belief that each one of "the 29" would stand any detailed scrutiny with regard to whether they were culpable of any gross violation of human rights, within the meaning of the provisions relating to the granting of amnesty.

As the records of the Amnesty Committee will show, though some of the names are common to both, our list of "the 29" is not the same as the list of 37 which the Committee seemed to have considered.

We are therefore uncertain as to whether the selection of those among "the 37" other than "the 29" was based on the same criteria as were used when "the 29" were selected.

Accordingly, we would humbly suggest that the Amnesty Committee should consider "the 29" or any new list which might be drawn up, which would include other leaders of the ANC who have applied for amnesty, as reflected above.

*We trust that this letter will help you and the Committee in its work. We are ready further to assist the Committee as it requires, according to our ability. We therefore look forward to hearing from you in due course.*

*Yours sincerely*  
DEPUTY SECRETARY GENERAL

Subsequent to receiving this letter the Applications of Mokoape and Mafu have been withdrawn from the list, bringing the total number for joint consideration down to 27.

## ISSUES

In our view there are two principal issues to be considered in these applications.

The first issue relates to the reliance by the applicants on the declaration quoted herein above. The thrust of the declaration is that the applicants collectively take full responsibility for the activities of their institutions or structures and apply for amnesty " in the event and to the extent that any of the activities of these institutions and structures could in any many whatsoever be regarded as acts/omissions or offences envisaged in the Act".

The cardinal point for consideration is whether this committee can grant amnesty to the applicants for acts committed by members of the various structures (which acts they are unaware of) on the basis of collective political and moral responsibility.

The second issue relates to whether the applications, as amplified in terms of the letter of the 10th November 1998, disclose any specific act that constitutes an offence or delict.

We therefore accordingly proceed to deal with these issues *seriatim*.

Having regard to the declaration it is quite evident that the individual applicants apply for amnesty not because they committed any acts that could constitute an offence or a delict but do so solely because they are persons who were either in the leadership of the ANC at various times between 1960 to 1994, or were members of the structures established by the ANC in order to wage a struggle against the NP led government and therefore take collective responsibility for the acts committed by their members in the various structures which acts were committed under the ANC's political authority, direction and leadership. They accordingly assume political and moral accountability for such acts.

It is appropriate at this stage to refer to the sections for the granting of amnesty as contained in the Act. Section 20 (1) stipulates as one of the requirements for amnesty that "the act, omission or offence" in respect of which amnesty is sought must be an "act associated with a political objective". Section 20 (1) c stipulates that the applicant must make a full disclosure of all the relevant facts in respect of the "act, omission or offence" for which amnesty is sought. Section 20 (2) then steps in to define an "act associated with a political objective". It states that an "act associated

with a political objective means an act or omission which constitutes an offence or a delict which according to the criteria in subsection (3), is associated with a political objective, ...". It is clear from these sections that for an applicant to qualify for amnesty he should have committed an act which constitutes a delict or an offence; he should fully disclose, *inter alia*, the nature and extent of his participation in respect of the offence or delict for which he seeks amnesty and provide other relevant facts which will be used by the Committee in its application of the prescribed criteria contained in section 20(3) in determining whether or not a particular act, omission or offence qualifies for amnesty.

The applicants' applications are founded on collective responsibility for acts committed by their members in the event and to the extent that such acts are found to be acts associated with a political objective. In as much as the applicants are to be commended for taking such a noble step of publicly taking collective responsibility in the manner they have done, it was not the intention of the legislature to extend amnesty to the applicants merely on the basis of collective responsibility as the applicants seek to do. The sections dealing with the granting of amnesty are quite clear and unambiguous. The individual applicant must, *inter alia*, fully disclose a specific offence or delict advised, planned, directed, commanded, ordered or committed by herself/himself in order to qualify for amnesty. In the case of the applicants it is quite evident that they are not aware of all the acts committed by their members and one can comprehend their conundrum in this regard.

It is further evident that from the declaration and the letter relied upon by the individual applicants the applicants sought to apply not as individuals in their personal capacities but in their capacity as " a representative group of the ANC leadership" for the period 1960 to 1994.

It is instructive to point out that the Act does not provide *locus standi* to Liberation Movements, Political Organisations or the State to apply for amnesty for acts associated with a political objective as defined in the sections quoted herein above. These juristic entities are nevertheless immune from both criminal and civil liability in terms of section 20 (7) (a), once "a person" has been granted amnesty in respect of an act, omission or offence. In the case of the ANC, once a member or supporter of that organisation has been granted amnesty for an act, offence or omission, the ANC is indemnified against any criminal and civil liability for the acts of the wrongdoer (who has been granted amnesty) which could have arisen in consequence of its vicarious liability for such an act, omission or offence. The State is equally discharged from any civil liability if its employee has been granted amnesty for any act omission or offence in circumstances where it would have been held vicariously liable.

It therefore follows that the ANC will not be held vicariously liable for the acts that the applicants might have intended to cover through their applications and for which they take collective responsibility once amnesty is granted to individual applicants who are their members and such amnesty is granted in respect of acts committed by them in their various structures set up by the ANC leadership at various times.

Having said that, it needs to be mentioned that the ANC will be so indemnified **only to the extent** that their members have been granted amnesty for specific acts. It is trite that notwithstanding the lack of *locus standi* to these juristic entities, no provision has been made in the Act to extend indemnification to such bodies as the ANC or the State in circumstances where their members have not applied and have not been granted amnesty for acts associated with a political objective.

The second and fundamental issue that we have to consider is whether the applications of the individual applicants comply with the requirements of the Act at all, in terms of Section 18 and 20 (1) of the Act.

Section 18 (1) which deals with **applications for granting of amnesty** provides that:

"Any person who wishes to apply for amnesty in respect of any act, omission or offence on the grounds that it is an act associated with a political objective, shall within 12 months from the date of the proclamation referred to in Section 7 (3), or such extended period as may be prescribed, submit such an application to the Commission in the prescribed form".

Section 20 (1) which deals with the **granting of amnesty** provides that:

"If the Committee, after considering an application for amnesty, is satisfied that :-

(a) the application complies with the requirements of this Act;

(b) the act, omission or offence to which the application relates is an act associated with a political objective committed in the course of the conflicts of the past in accordance with the provisions of subsections (2) and (3); and

(c) the applicant has made a full disclosure of all relevant facts, it shall grant amnesty in respect of that act, omission or offence".

Section 20 (2) further defines an act associated with a political objective as follows:

In this Act, unless the context otherwise indicates, "act associated with a political objective" means any act or omission which constitutes an offence or delict which, according to the criteria in subsection (3), is associated with a political objective, and which was advised, planned, directed, commanded, ordered or committed within or outside the Republic during the period 1 March 1960 to the cut-off date  
... "

Having regard to the provisions of Section 20(1) (a) (b) and Section 20 (2) it is quite clear that an application will only comply with the requirements of the Act if it discloses an act which constitutes an offence or delict (Section 20 (2) ) for which an applicant has made a full disclosure in terms of Section 20 (1) (c).

None of the applicants have disclosed any such act, omission or offence. On the contrary, pursuant to the enquiries made by this Committee in terms of Section 19, the applications as amplified in the letter quoted hereinabove, categorically state that "none of the people on its list had been involved in any individual action(s) for which they would require to apply for amnesty"; " ... that the persons involved meet the criterion that they have no need to apply for amnesty for any specific act", that they do not have to apply for amnesty for "specific acts .... since there are none".

According to the amplification the stated reasons for the applications were that the leadership of the ANC was determined then as at present, to;

- show its determination "not to abandon or desert the thousand[s] of cadres who acted in furtherance of the struggle which it led, by suggesting that only they had an obligation to apply for amnesty, where necessary".

- "lead its members by example, encouraging those affected to follow in its footsteps" by applying for amnesty.
- " ... to contribute to the realisation of the purposes of the Promotion of National Unity and Reconciliation Act whose effectiveness was necessarily premised on the full cooperation of all who had been involved in the conflict that occurred during the period specified in the Act".

The Committee notes the reasons advanced by the ANC. Unfortunately no matter how noble and commendable these reasons may be, they clearly demonstrate that these applications do not comply with the requirements of the Act as no act, omission or offence is the subject of the applications as required by Section 18(1) of the Act. The applications do not relate to any specific act, omission or offence. On their own admission none of the applicants have been involved in any act "for which they would require to apply for amnesty". In the premises, no amnesty can be granted to the applicants because in terms of what is before the Committee they have committed no offence or delict.

The intention of the applicants to support the thousands of cadres did not warrant an application of this nature. It would have been sufficient for the applicants to support their members' applications for amnesty where necessary without themselves applying for amnesty for the acts of such members. That it was never envisaged by the Act to have persons such as the applicants applying for amnesty on the basis of collective responsibility or for the aforementioned reasons is to be found in Section 20 (7) (a) which has already been discussed hereinabove.

#### FINDINGS

It is our finding that:

In so far as the applicants seek to apply for amnesty for acts committed by their members in the various institutions and structures on the basis of collective political and moral responsibility, their applications fall outside the ambit of the act and accordingly they do not require to apply for amnesty.  
In so far as the applications read with the amplification are concerned we find that no amnesty can be granted to the applicants because

1. on their own version they have committed no offence or delict in terms of the act.
2. Their applications do not relate to any specific act, omission or offence in terms of Section 20 (1) and therefore do not fall within the ambit on the Act.

#### CONCLUSION

In the premises the applications do not comply with the requirements of the Act and no amnesty is granted.

Signed on the 4th Day of March 1999.

1. Judge S. Khampepe

2. Judge S. Miller

3.

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Adv. N.J. Motata

4.

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W. C. Malan  
SK/nt/

Verw : A15  
Navraag: Adv A R Ackermann  
Tel : 845 6432

**SPECIAL LITIGATION UNIT /  
SPESIALE LITIGASIE EENHEID**

26 Junie 2006

**MEMORANDUM**

AAN : Dr S Ramaite S C  
VAN : A R Ackermann S C  
ONDERWERP : DIE STAAT teen

- (1) MTHETHELEDI ZEPHANIA MNCUBE
- (2) MZONDELELI EUELID NONDULA
- (3) JABULANI SYDNEY MBULI

Saakdossiere :

- (1) Messina MR 67/12/85 : Moord van 2 SAP lede
- (2) Messina MR 57/11/85 : Landmynontploffing
- (3) Messina MR 58/11/85 : Landmynontploffing
- (4) Messina MR 67/11/85 : Landmynontploffing
- (5) Messina MR 65/11/85 : Landmynontploffing
- (6) Messina MR 66/11/85 : Landmynontploffing
- (7) Messina MR 34/12/85 : Landmynontploffing
- (8) Messina MR 41/12/85 : Landmynontploffing
- (9) Messina MR 21/02/86 : Landmynontploffing
- (10) Alldays MR 10/10/86 : Landmyn onskadelik gestel
- (11) Alldays MR 11/10/86 : Landmyn onskadelike gestel

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Die ondersoek het verder op 'n gewapende aanval op 26 Desember 1986 op 'n SA' patrollie betrekking waartydens 3 ANC-lede doodgeskiet en een (MNCUBI) gearresteer is. MNCUBE het later daarin geslaag om te ontsnap deur twee SAP-lede nl ALOFF GERBER en Sers NEL dood te skiet. (Messina MR 67/12/86).

Eersgenoemde twee persone hierbo (MNCUBE en NONDULA) is later gearresteer en is weens al die gemelde misdade vervolg, skuldig bevind en gevonniss, terwyl di derde persoons (MBULI) nooit gearresteer was nie.

## 2. AMNESTIE

Amnestie is op 16 Maart 2001 aan al die bogenoemde persone verleen vir alle misdade wa met gemelde ontploffings verband hou. Eersgenoemde (MNCULBE) het ook amnestie vir die moord van die twee SAP lede ontvang.

## 3. OPMERKING

Die ANC het die gebruik van landmyne in die Messina grensgebied goedgekeur en opdragte in die verband is deur die bevelstruktuur van Umkhonto we Sizwe (MK) aan lede gegee. (Amnestie uitspraak van vermeldes).

Volgens getuienis gelewer was die vermeldes onder bevel van ene MANCHECK wat opdragte gegee en aan MK gesagvoerders verslag moes doen. MANCHECK is oorlede en daar is geen getuienis oor sy skakeling met die MK oppergesag nie.

Al die ander ANC-lede (voetsoldate) wat by hierdie misdade betrokke was is oorlede.

## 4. BESLISSING

Ten opsigte van die sogenaamde voetsoldate is geen verdere ondersoek nodig nie. Ten aansien van die ANC leierskap wat die opdragte vir die landmynveldtog gegee het en nie amnestie ontvang het nie, moet 'n besluit tegelegener tyd nog geneem word nadat al die relevante partye gesprek is.

Bovermelde is 'n moeilike besluit.

Adv A R Ackermann S C  
SPESIALE DIREKTEUR

/tp

26/1/2001

A/INV/25/02/TRC

TO: M. B. T. NOOLUKA

FROM: RC MACADAM  
Deputy Head of PCLU

### ALLEGATIONS AGAINST THE PRESIDENT

1. I enclose herewith a copy of CIO Leask's affidavit confirming that General Van der Merwe did not furnish him with any information on the basis that this was in the possession of his attorney Wagener.
2. I have conducted the following investigations into the matter:
  - (i) SAPS are in possession of a huge number of dockets relating to criminal offences committed by the ANC/MK. I have a list of these dockets. In not one of them has the President been implicated as a suspect.
  - (ii) Several prominent MK members applied for and received amnesty. None of these implicated the President. In terms of section 20 (7) (a) of Act 34 of 1995 the organisation cannot be held vicariously liable for the acts committed by their members. Wagener represented the victims at several of these hearings and only made allegations against members of the Military Headquarters of the ANC and not the President. ✓
  - (iii) The Foundation for Equality Before the Law made a submission to the TRC accusing the ANC of several human rights abuses. These allegations are almost entirely based on Sechaba and other publications which are not admissible in law without proof of authenticity. Yet again the President was not implicated.
  - (iv) The ANC also made a submission to the TRC and admitted to various human rights abuses. The President made the submission relating to landmine incidents. (The admissions were made on behalf of the organisation and not in his individual capacity. In terms of section 29 of Act 34 of 1995 the submission is inadmissible in criminal proceedings. ✓
  - (v) It is true that the President applied for and was refused amnesty. The basis of the refusal was that he did not admit to committing criminal acts.

- (3) The various old Terrorist laws have been abolished. His guilt or innocence must be determined by the general principles of common law relating to conspiracy and common purpose. In this regard it must be proved either that he was present at a meeting where he agreed participated in the commission of the crimes. I am unable to find any evidence to prove either.

ANDREW GORDON LEASK

States under oath in English:

I am appointed as Head of the Special National Projects Unit at the Directorate of Special Operations Head Office, where I hold the rank of Chief Investigating Officer.

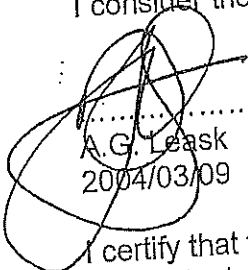
As part of my duties I perform and assist with investigation for the Priority Crimes Litigation Unit.

On 2004/03/09 I conducted an interview with the ex police Commissioner Johan van der Merwe. The purpose of this meeting was to offer him an opportunity to make available any information or evidence that could assist in establishing a case for possible criminal charges against the leadership of the ANC.

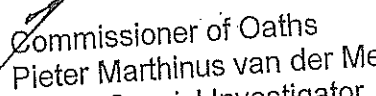
The General has clearly stated that he has conducted an investigation and has obtained documents and statements implicating members of the ANC with regard to the so-called TRC cases. Further that these documents have been handed to their attorney Wagener who is still in possession thereof.

General van der Merwe has undertaken to confirm this in a sworn statement which he will prepare himself.

I know and understand the contents of the declaration.  
I have no objection to taking the oath.  
I consider the oath to be binding on my conscience.

  
A.G. Leask  
2004/03/09

I certify that the deponent has acknowledged that he knows and understands the contents of this declaration which was sworn to before me and the deponents signature placed thereon in my presence at PRETORIA on 2004/03/09 at 14:00.

  
Commissioner of Oaths  
Pieter Marthinus van der Merwe  
Senior Special Investigator  
Directorate of Special Operations  
VGM Building  
Weavind Park  
PRETORIA  
R.S.A

## ***NPA MEDIA RELEASE***

***DATE: 15 MAY 2004***  
***IMMEDIATE RELEASE***

### ***THE NPA CLOSES THE FILE ON 37 ANC LEADERS***

The National Prosecuting Authority (NPA) has decided not to launch any investigation into 37 ANC leaders who were refused amnesty by the TRC.

In 1996 the ANC leadership, led by President Mbeki, jointly applied for amnesty and took collective responsibility for policy decisions that led to cadres committing acts that were regarded as criminal by the previous government.

According to the joint application, none of the leaders had committed any individual action for which they were required to seek amnesty.

In terms of the TRC Act, people had to make individual applications, give a full disclosure of each and every specific offence that the person had committed. The TRC committee found that the joint application did not disclose any act, omission or offence.

The TRC, therefore, turned down the ANC leaders' application, as it did not comply with the Promotion of National Unity and Reconciliation Act of 1995.

The joint amnesty, along many other amnesty judgments, was referred to the NPA for the organization to decide whether or not prosecutions could be instituted.

The "Foundation for Equality Before the Law" – an organization led by former National Police Commissioner, General Johan van der Merwe, which mainly comprises former members of the old security police – sought to use the TRC judgment to call for the prosecution of the ANC leaders.

The Foundation alleged that it was in possession of documents that could prove a criminal case against the ANC leaders.

The National Director of Public Prosecutions, Bulelani Ngcuka, made several requests to be furnished with this evidence, however, the Foundation failed to supply the NPA with the relevant facts.

Furthermore, the NPA perused all relevant material in possession of both the TRC and the SAPS and was unable to find any evidence on which to launch an investigation.

In the circumstances, the NPA has no reasonable basis to authorize an investigation in terms of the provisions of Sec 28 of Act 32 of 1998.

*Issued by Siphon Ngwema, Executive Manager: NPA Communications.  
For more information contact him @ 082 499 8111.*

Amnesty "F"

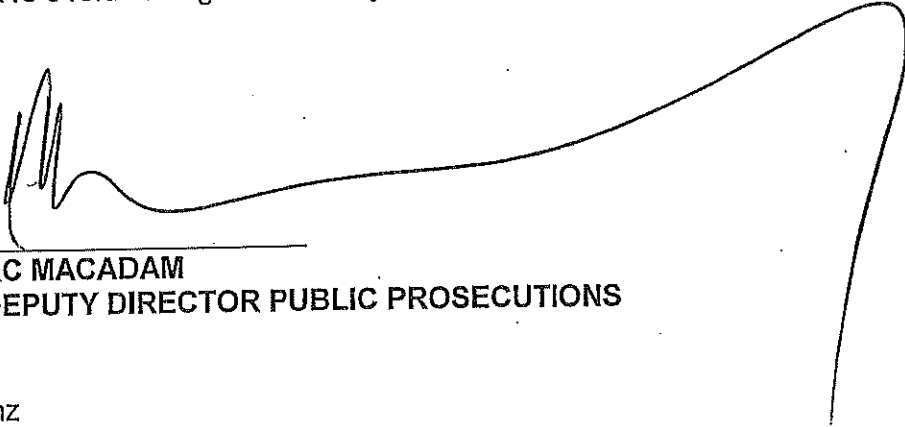
Inv 25/02 TRC

2 July 2004

Supt Brits  
SAPS  
Crimes Against the State  
PRETORIA

**REFUSAL OF AMNESTY: PRESIDENT AND OTHER PROMINENT  
ANC LEADERS**

Having considered all the relevant material in its possession, the National Prosecuting authority has decided that there is insufficient evidence upon which to launch a criminal investigation arising from the TRC's refusal to grant amnesty to the above persons.



**RC MACADAM  
DEPUTY DIRECTOR PUBLIC PROSECUTIONS**

/hz

**INTERNAL MEMORANDUM**

INV 25/02 TRC

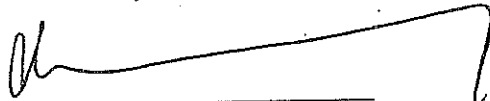
P. O. Box 752,  
PRETORIA  
0001

VGM Building  
Hartley St.  
Weavind Park  
0001  
Pretoria  
South Africa

Tel: (012) 845 6431  
Cell: 082 498 6033

**TO:** MR B T NGCUKA  
**FROM:** R C MACADAM  
**SUBJECT:** INVESTIGATION AGAINST THE PRESIDENT AND OTHER  
PROMINENT ANC LEADERS  
**DATE:** 5 JULY 2004

1. I normally do not allow myself to be distracted by such matters, but given the manner in which Commissioner Selebi sought to attack you over the above case, the following is of interest:
2. On 5 July 2004 Senior Superintendent L Bester and Superintendent H Britz of SAPS Headquarters saw me in connection with the attached memo confirming the NPA's decision not to conduct an investigation. They were displeased with the contents of the memo and attempted to persuade me to reopen the case against the President, as there was an abundance of evidence to justify a prosecution. I have invited them to furnish me with dockets containing such evidence.
3. During these discussions Mr Ackermann joined the meeting and drew their attention to the fact that since June 2003 he had invited them to produce evidence implicating the President without any success. I am now waiting to see if any dockets will materialize and will inform you accordingly.



**R C MACADAM**  
**DEPUTY HEAD PCLU**



**A R ACKERMANN SC**  
**HEAD: PCLU**

I agree.

Adv. M  
P. A.  
124  
[Handwritten signatures]

## INFORMATION NOTE

To: Assistant Commissioner P J Jacobs

### TRC RELATED MATTERS: INQUESTS

- 1 As far as the finalization of certain inquests are concern, the following cases were perused an the findings are as follows:
- 2 **Messina CR 57/11/85 M Z Ncube and two others.**  
Inquests were held in respect of the Van Eck and De Nysshen victims. (Attached copies of the J56's - annexures A-F).  
Inquests in respect of the two policemen, Nel and Gerber, were not held because the accused, Ncube and two others were charged and convicted but receive amnesty.
- 3 **Ellisras CR A28/8/88 M J Rampolo**  
Inquests were held in respect of the policeman N C Claassen and the ANC member J M Kgwahla who were killed during the incident. (Attached copy of the Inquest Register at Seleka Magistrate's Court - annexure G). Unfortunately no J56's could be traced.
- 4 **King Williams Town CR 397/11/92 T T Xundu**  
Inquests were held in respect of Gillian Davis, Rhoda MacDonald, David Andre Theresa Davis and Ian Wheelright MacDonald who were killed during the incident. ( Attached copies of the J56's - annexures H - K).
- 5 **Diepkloof CR 228/8/89 Micheal Ndlovu, William Mafa and Ben Bani**  
The circumstances surrounding Michael Ndlovu in so far as granting of amnesty is concern, is still under investigation.
- 6 **Umbumbulu CAS 35/4/87 Steven Mkulusi, Moses Mkize and Sakhile Nzama**  
The Magistrate's Court at Umbumbulu was visited but neither could the Inquest register nor the Inquest file, with a possible J56 been traced.
- 7 **Jeppe CR 47/7/88 Ellispark Bomb**  
Inquests were held in the respect of Clive Winston Quayle and Linus Mare who were killed during the incident. (Attaced copies of the J56's - annexures L+M)
- 8 **Fort Beaufort CR 156/3/93 N Diaho-Monehang**  
An inquest was held in respect of J F Jerling who was killed during the incident. (Attached copy of J56 - annexure N)

[Handwritten signature]

**COMMANDER; CRIMES AGAINST THE STATE**  
**L J BESTER**

**SENIOR SUPERINTENDENT**

MESSINA M.R. 6772/86

ANNEXURE A 1104

-76-200000 (M-S)

J 56

No. 1 1986

# INQUEST: ACT 58 OF 1959 GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959

MESSINA

MESSINA

Li. And. Str. & O.S.
PRIVATE BAG X82
1986-05-27
MESSINA 0800

A.J. BOSCH

esquire, Magistrate for the said district  
Landdros van genoemde distrik en  
as assessor(s) on the 16de day  
as assessor(e) op die dag

1986 into the circumstances attending the death of the person mentioned below.  
aangaande die omstandighede in verband met die dood van ondergenoemde persoon.

ns of section 16 of the Act:  
volge artikel 16 van die Wet:  
of the deceased person  
t van die oorledene

CARLA DE NYSSCHEN; BLANKE; DOGTER; 8 JAAR OUD

ill name, race, sex, age and occupation/Meld volle naam, ras, geslag, ouderdom en beroep.)

15 DESEMBER 1985

or likely cause of death  
s of waarskynlike oorsaak van dood

SKOK EN BLOEDING NA ERNSTIGE LEDEMAAT EN HOOF BESERINGS

OPGEDOEN TOE LANDMYN ONTPLOF HET ONDER VOERTUIG WAAROP OORLEDENE 'N  
PASSASIER WAS.

er the death was brought about by any act or omission involving or amounting to an offence on the part of any  
dood veroorsaak is deur 'n handeling of versuim, wat 'n misdryf aan die kant van iemand insluit of uitmaak

JA, ONBEKENDE PERSOON OF PERSONE WIE LANDMYN GEPLANT HET.

*(Handwritten signature)*  
A.J. BOSCH

MEI 1986

ADD. Magistrate/Landdros 11.11.81

Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above  
ERKING.—Artikel 16 (3) van die Wet bepaal dat indien die Landdros nie in staat is om enige van die bevindings  
d that fact.  
ld aan te teken nie, hy dié feit moet boekstaaf.

RNEY-GENERAL,  
JREUR-GENERAAL,  
vaatsak X300  
ETORIA 0001

ms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.  
olge artikel 17 (1) van die Wet op GeregteLIKE Doodsondersoekte, 1959 (Wet 58 van 1959), word die notule van

Messina P.N. 67/12/86

ANNEXURE B  
A92

G.P.S. 45811-1975-76-200000 (M-S)

J 56

No. 2 19.86

INQUEST: ACT 58 OF 1959  
GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959

helden at MESSINA in the district of MESSINA  
ehou te A.J. BOSCH

of mnr. esquire, Magistrate for the said district  
Landdros van genoemde distrik en

MEI 19 86 into the circumstances attending the death of the person mentioned below.  
as assessor(s) on the 16de day  
as assessor(e) op die dag

ii. in terms of section 16 of the Act  
aangaande die omstandighede in verband met die dood van ondergenoemde persoon.

a) Identity of the deceased person: JOHANNES JACOBUS DE NYSSCHEN; BLANKE; SEUN; 3 JAAR OUD;  
Identiteit van die oorledene

(State full name, race, sex, age and occupation/Meid volle naam, ras, geslag, ouderdom en beroep.)  
Date of death: 15 DESEMBER 1985  
Datum van sterfgeval

Cause or likely cause of death: SKOK EN BLOEDING NA ERNSTIGE NEK-, LEDEMAAT- EN 75%  
Oorsaak of waarskynlike oorsaak van dood

BRANDWONDE OPGEDOEN TOE LANDMYN ONTPLOF HET ONDER VOERTUIG WAAROP OORLEDENE  
'N PASSASIER WAS.

Whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person: JA, ONBEKENDE PERSOON OF PERSONE WIE LANDMYN GEPLANT HET.

6 MEI 1986

A.J. BOSCH  
ADD. Magistrate/Landdros 11.11.81

NOTE.—Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above  
MERKING.—Artikel 16 (3) van die Wet bepaal dat indien die Landdros nie in staat is om enige van die bevindings  
word that fact.  
meld aan te teken nie, hy dié feit moet boekstaaf.

CLERK-GENERAL,  
SREUR-GENERAAL,  
Private X300  
P.O. Box 0001  
In terms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings  
in terms of artikel 17 (1) van die Wet op Geregtelelike Doodsondersoeke 1959.

92  
93  
94  
95  
96

MESSINA M.K. 6/12/86

ANNEXURE C 1776

1-1975-76-200 000 (M-S)

J 56

No. 3/86

INQUEST: ACT 58 OF 1959  
GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959

MESSINA in the district of MESSINA

A.J. BOSCH

in die distrik

DEURS

1986-05-27

MAGISTRATE

Magistrate, Magistrate for the said district  
Landdros van genoemde distrik en  
as assessor(s) on the 16de day  
as assessor(e) op die dag

MEI 1986 into the circumstances attending the death of the person mentioned below,  
aangaande die omstandighede met die dood van ondergenoemde persoon.

in terms of section 16 of the Act:  
in terme van artikel 16 van die Wet:

Identity of the deceased person: MARIA GERTRUIDA DE NYSSCHEN; BLANKEVROU; 56 JAAR OUD  
Identiteit van die oorledene

Full name, race, sex, age and occupation/Meld volle naam, ras, geslag, ouderdom en beroep.)

Date of death: 15 DESEMBER 1985

Place of death: SKOK EN BLOEDING NA ERNSTIGE NEK EN VERMINKTE ONDERSTE

Probable cause of death: LEDEMATE OPGEDOEN TOE LANDMYN ONTPLOF HET ONDER VOERTUIG WAAROP OORLEDENE

Probable cause of death: 'N PASSASIER WAS.

Whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person: JA, ONBEKENDE PERSOON OF PERSONE WIE LANDMYN GEPLANT HET.

16 MEI 1986

A.J. BOSCH

ADD. Magistrate/Landdros Tl. 11.81

NOTE.—Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above  
OPMERKING.—Artikel 16 (3) van die Wet bepaal dat indien die Landdros nie in staat is om enige van die bevindings  
word that fact.  
Meld aan te teken nie, hy dié feit moet boekstaaf.

ATTORNEY-GENERAL,  
SOLICITOR-GENERAAL,  
Private Bag X300  
PORT OF SPAIN, JOHANNESBURG

In terms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.  
In terme van artikel 17 (1) van die Wet op Geregte Like Doodsondersoek, 1959 (Wet 58 van 1959), word die notule van  
hiermee voorgelê.

6 MAY 1986

A. J. BOSCH

MESSINA M.R. 67/12/86

ANNEXURE A112

J 56

176-200000 (M-S)

No. 4 19 86

INQUEST: ACT 58 OF 1959  
GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959

MESSINA

in the district of MESSINA  
in die distrik

A.J. BOSCH

1986 Esquire, Magistrate for the said district  
Landdroes van genoemde distrik en  
as assessor(s) on the 16de day  
MESSINA assessor(s) op die dag

19 86 into the circumstances attending the death of the person mentioned below.  
aangaande die omstandighede in verband met die dood van ondergenoemde persoon.

ms of section 16 of the Act:  
volge artikel 16 van die Wet:  
of the deceased person  
it van die oorledene

JACOBA VAN ECK; BLANKEVROU; 34 JAAR OUD

all name, race, sex, age and occupation/Meld voile naam, ras, geslag, ouderdom en beroep.)

15 DECEMBER 1985

van sterfgeval

or likely cause of death  
of waarskynlike oorsaak van dood

SKOK EN BLOEDING NA ERNSTIGE NEK, LEDEMAAT EN IN-

ENDIGE BESERINGS OPGEDOEN TOE LANDMYN ONTPLOF HET ONDER VOERTUIG WAAROP  
ORLEDENE 'N PASSASIER WAS.

death was brought about by any act or omission involving or amounting to an offence on the part of any  
veroorsaak is deur 'n handeling of verstuipt, wat 'n misdryf aan die kant van iemand insluit of uitmaak  
JA, ONBEKENDE PERSOON OF PERSONE WIE LANDMYN GEPLANT HET.

16 MEI 1986

A.J. BOSCH

ADD Magistrate/Landdroes 11.11.81

E.—Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out at  
ERKING.—Artikel 16 (3) van die Wet bepaal dat indien die Landdroes nie in staat is om enige van die bevind  
d that fact.  
d aan te teken nie, hy dié feit moet boekstaaf.

RNEY-GENERAL,  
UREUR-GENERAAL,  
atsak X300

RIA 0001  
ms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.  
olge artikel 17 (1) van die Wet op Geregte Like Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van  
iermee voorgelê.

A.J. BOSCH

MESSINA 11.11. 67/12/86

ANNEXURE E  
1108

S-76-200 000 (M-S)

J 56

No. 5 1986

INQUEST: ACT 58 OF 1959  
GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959

MESSINA in the district of MESSINA  
in die distrik

A.J. BOSCH

Magistrate for the said district  
WATSAK/PRIVATE

as assessor(s) on the 16de day  
as assessor(e) op die dag

19 86, into the circumstances attending the death of the person mentioned below.  
aangaande die omstandighede in verband met die dood van ondergenoemde persoon.

ns of section 16 of the Act:  
volge artikel 16 van die Wet:

of the deceased person. IGNATIUS MICHAEL VAN ECK, BLANKE, SEUN; 2 1/2 JAAR OUD  
t van die oorledene

ll name, race, sex, age and occupation/Meld volle naam, ras, geslag, ouderdom en beroep.)

death. 15 DESEMBER 1985

an sterfgeval

likely cause of death. SKOK EN BLÔEDING NA ERNSTIGE HOOF, ROMP- EN LEDEMAAT-  
of waarskynlike oorsaak van dood

ERINGS OPGEDOEN TOE LANDMYN ONTPLOF HET ONDER VOERTUIG WAAROP OORLEDENE  
PASSASIER WAS.

the death was brought about by any act or omission involving or amounting to an offence on the part of any  
ood veroorsaak is deur 'n handeling of verstuijn, wat 'n misdryf aan die kant van iemand insluit of uitmaak  
JA, ONBEKENDE PERSOON OF PERSONE WIE LANDMYN GEPLANT HET.

MEI 1986

A.J. BOSCH

ADD. Magistrate/Landdroos 11\*11.81

Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above  
KING.—Artikel 16 (3) van die Wet bepaal dat indien die Landdroos nie in staat is om enige van die bevindings  
that fact.  
aan te teken nie, hy dié feit moet boekstaaf.

NEY-GENERAL,  
EUR-GENERAAL,  
itsak X300

IA 0001  
of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.

ANNEXURE F  
A100

MESSINA M.R. 67/12/86

-200 000 (M-S)

J 56

No. 6 19 86

INQUEST: ACT 58 OF 1959  
GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959

MESSINA in the district of MESSINA  
in die distrik

A. J. BOSCH esquire, Magistrate for the said district  
Landdros van genoemde distrik en  
as assessor(s) on the 16de day  
as assessor(e) op die dag

19 86 into the circumstances attending the death of the person mentioned below.  
aangaande die omstandighede in verband met die dood van ondergenoemde persoon.

section 16 of the Act:  
artikel 16 van die Wet:

deceased person: NELMART VAN SCKE ABLANKE; DOGTER; 8 JAAR-OU  
die oorledene

name, race, sex, age and occupation/Meld volle naam, ras, geslag, ouderdom en beroep.)  
15 DESEMBER 1985

cause of death: SKOK EN BLOEDING NA ERNSTIGE HOOF, EKSTENSIEWE LEDEMAAT  
waarskynlike oorsaak van dood.  
NEK BESERINGS OPGEDOEN TOE LANDMYN ONTPLOF HET ONDER VOERTUIG WAAROP  
LEDENE 'N PASSASIER WAS.

death was brought about by any act or omission involving or amounting to an offence on the part of any  
veroorsaak is deur 'n handeling of versuim, wat 'n misdryf aan die kant van iemand insluit of uitmaak  
A, ONBEKENDE PERSOON OF PERSONE WIE LANDMYN GEPLANT HET.

1986

A. J. BOSCH

ADD. Magistrate/Landdros 1 P. 11. 81

Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above  
G.—Artikel 16 (3) van die Wet bepaal dat indien die Landdros nie in staat is om enige van die bevindings  
te reël.  
teken nie, hy dié feit moet boekstaaf.

GENERAL,  
L-GENERAAL,  
X300  
0001

Section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.  
Artikel 17 (1) van die Wet op Geregtelike Doodsondersoek, 1959 (Wet 58 van 1959), word die notule van

Datum naas- bestaandes kennis gegee Date next of kin notified	Datum van aanvang van geregtelike doodsondersoek Date of commencement of inquest	Bevinding en datum daarvan Finding and date thereof	Datum aan Prokureur- generaal gestuur Date sub- mitted to Attorney- General	Datum van Prokureur- generaal terug- ontvang en sy verwysings- nommer Date of return by Attorney-General and his reference number	Datum terug aan polisie Date returned to police
11/1/89	17/1/89	The death was not about by any act or omission involving or amounting to an offence on the part of any person.	N/A	N/A	?
1/1/89	6/2/89	The deceased is a terrorist who was killed during hot pursuit and as such there is no act or omission on the part of any person involving or amounting to an offence but defence.	?	?	?
1/1/89	20/2/89	The deceased is a terrorist who was killed during hot pursuit and as such there is no act or omission on the part of any person involving or amounting to an offence but defence.	20/2/89	14/3/89 13/1/89	89/3/17
1/8/89	2/2/89	The deceased was killed during process of hot pursuit. One terrorist was killed while there are some spores of three other	20/2/89	14/3/89 18/1/89	89/3/17

MMUSO WA LEBOWA  
Magistrate/Magistrata  
Magistraat  
1993-01-26

Private Bag/Privaatsak  
POTGIETERSRUS  
LEBOWA GOVERNMENT SERVICE  
LEBOWA REGERINGSDIENST

ADD: MAGISTRATE/MAGISTRAT/MAGISTRAAT  
PHALALA

PHALALA 20/2/89

SEN OR'AANKLAAR/PROSECUTOR  
MOTER/ADVOKAAT/ADVOKAAT  
LEBOWA GOVERNMENT SERVICE

GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959  
INQUEST: ACT 58 OF 1959

Gehou te Held at KING WILLIAM'S TOWN in die distrik in the district of KING WILLIAM'S TOWN  
voor by N MJEKULA Landdros van genoemde distrik en Magistrate for the said district  
met with as assessor(e) op die dag as assessor(s) on the day

an 18.2.2004 19 aangaande die omstandighede in verband met die dood van ondergenoemde persoon.  
into the circumstances attending the death of the person mentioned below.

Indings ingevolge artikel 16 van die Wet:  
Findings in terms of section 16 of the Act:

(a) Identiteit van die oorledene Identity of the deceased person GILLIAN DAVIS  
FEMALE 53 years  
(Meld volle naam, ras, geslag, ouderdom en beroep/State full name, race, sex, age and occupation)

(b) Datum van sterfgeval Date of death 28.11.1992

(c) Oorsaak of waarskynlike oorsaak van dood Cause or likely cause of death MULTIPLE SCHRAPNEL WOUNDS AND RETROPERITONEAL HAEMORRHAGE

(d) Of die dood veroorsaak is deur 'n handeling of versuim, wat 'n misdryf aan die kant van iemand insluit of uitmaak  
Whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person  
DEATH BROUGHT ABOUT BY AN ACT AMOUNTING TO AN OFFENCE ON THE PART OF  
THEMBELANI TANDEKILE XUNDU, MALUSI MORRISON, LUNGIS!UMZIWONKE NTINTILE,  
TOBELA MLAMBISA

Datum 18.2.2004 (SGD) N MJEKULA  
Date Landdros/Magistrate

OPMERKINGS.—1. Artikel 16 (3) van die Wet bepaal dat indien die Landdros nie in staat is om enige van die bevindings hierbo  
NOTE.—1. Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above he shall  
vermeld aan te teken nie, hy dié feit moet boekstaaf.  
record that fact.

2. Wanneer die notule van verrigtinge ingevolge artikel 18 (1) van die Wet aan 'n regter voorgelê word, word die prosedure voorgeskryf  
When the record of proceedings is submitted to a judge in terms of section 18 (1) of the Act, the procedure prescribed in paragraph  
in paragraaf 12 van die Kode Geregtelike Doodsondersoeke gevolg.  
12 of the code "Geregtelike Doodsondersoeke" should be followed.

DIE PROKUREUR-GENERAAL  
THE ATTORNEY GENERAL DIRECTOR OF PUBLIC PROSECUTIONS

GRAHAMSTOWN  
Ingevolge artikel 17 (1) van die Wet op Geregtelike Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van verrigtinge  
In terms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.  
hiermee voorgelê.

Datum 18.2.2004 (SGD) N MJEKULA  
Date Landdros/Magistrate

Die stukke gaan hiermee terug vir lissering. My verwysingsnommer is 9/2/9-110/04  
The record is returned herewith for filing. My reference number is  
PUBLIC PROSECUTOR

No. 57/2003 Jaar Year

GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959  
INQUEST: ACT 58 OF 1959

Gehou te Held at KING WILLIAM'S TOWN in die in the KING WILLIAM'S TOWN

\*afdeling van die Hooggeregshof van Suid-Afrika/streekafdeling/distrik  
\*division of the High Court of South Africa/regional division/district

voor by N MJEKULA \*regter/streeklanddros/landdros  
\*judge/regional magistrate/magistrate

van genoemde \*afdeling/streekafdeling distrik met  
of the said \*division/regional division/district with (i) as assessor(e)  
(ii) as assessor(s)

op (datum) 17.2.2004 aangaande die omstandighede in verband met die dood van ondergenoemde persoon.  
on (date) into the circumstances attending the death of the person mentioned below.

bevindings ingevolge artikel 16 van die Wet:  
findings in terms of section 16 of the Act:

(a) Identiteit van die oorledene  
Identity of the deceased person RHODA MacDONALD

FEMALE 56 years

(Meld volle naam, identiteitsnommer of ouderdom en geslag • State full name, identity number or age and sex)

(b) Datum van sterfgeval  
Date of death 29.11.1992

(c) Oorsaak of waarskynlike oorsaak van dood  
Cause or likely cause of death MULTIPLE WOUNDS OF BODY

(d) Of die dood veroorsaak is deur 'n handeling of versuim wat prima facie 'n misdryf aan die kant van iemand insluit of uitmaak:  
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:

DEATH BROUGHT ABOUT BY AN ACT AMOUNTING TO AN OFFENCE ON THE PART OF  
TEMBELANI TANDEKILE XUNDU, MALUSI MORRISON, LUNGIS'UMZIWONKE NTINTILI  
AND TOBELA MLAMBISA

Datum 17.2.2004  
Date

(SGD) N MJEKULA

Regterlike Beampte • Judicial Officer

OPMERKINGS: 1. Artikel 16 (3) van die Wet bepaal dat indien die regterlike beampte nie in staat is om enige van die bevindings hierbo vermeld aan te teken, hy dié feit moet boekstaaf.  
NOTE: 1. Section 16 (3) of the Act provides that if the judicial officer is unable to record any of the findings set out above he shall record that fact.

\*2. Wanneer die notule van verrigtinge ingevolge artikel 18 (1) van die Wet aan die hof of 'n regter daarvan voorgelê word, word die prosedure voorgeskryf in paragraaf 12 van die kode "Geregte like Doodsondersoeke" gevolg.  
\*2. When the record of proceedings is submitted to the court or a judge thereof in terms of section 18 (1) of the Act, the procedure prescribed in paragraph 12 of the code "Geregte like Doodsondersoeke" should be followed.

DIREKTEUR VAN OPENBARE VERVOLGINGS  
DIRECTOR OF PUBLIC PROSECUTIONS

GRAHAMSTOWN

Ingevolge artikel 17 (1) van die Wet op Geregte like Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van verrigtinge hiermee voorgelê.  
In terms of section 17(1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.

Datum 17.2.2004  
Date

(SGD) N MJEKULA

Regterlike Beampte • Judicial Officer

Die stukke gaan hiermee terug vir liassering. My verwysingsnommer is  
The record is returned herewith for filing. My reference number is

9/2/9-10/04 114/04

Die Direkteur: Openbare Vervolgings het besluit \*om te verwoig/om nie te verwoig nie.  
The Director: Public Prosecutions has decided \*to prosecute/not to prosecute.

Datum 17.2.2004

GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959
INQUEST: ACT 58 OF 1959

Gehou te Held at KING WILLIAM'S TOWN in die distrik in the district of KING WILLIAM'S TOWN
voor by N. MJEKULA Landdroos van genoemde distrik en Magistrate for the said district
met with as assessor(e) op die 18 dag as assessor(s) on the 18 day

FEBRUARY 2004

aangaande die omstandighede in verband met die dood van ondergenoemde persoon. into the circumstances attending the death of the person mentioned below.

Findings ingevolge artikel 16 van die Wet: Findings in terms of section 16 of the Act:

(a) Identiteit van die oorledene Identity of the deceased person DAVID ANDRE THERESA DAVIS

MALE 59 years (Meld volle naam, ras, geslag, ouderdom en beroep/State full name, race, sex, age and occupation)

(b) Datum van sterfgeval Date of death 28.11.1992

(c) Oorsaak of waarskynlike oorsaak van dood Cause or likely cause of death MULTIPLE SCHRAPNEL WOUNDS WITH LEFT HAEMOTHORAX

(d) Of die dood veroorsaak is deur 'n handeling of versuim, wat 'n misdryf aan die kant van iemand insluit of uitmaak Whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person DEATH BROUGHT ABOUT BY AN ACT AMOUNTING TO AN OFFENCE ON THE PART OF THEMBELANI TANDEKILE XUNDU, MALUSI MORRISON, LUNGIS'UMZIWONKE NTINTILE, TOBELA MLAMBISA

Datum 18.2.2004 (SGD) N. MJEKULA Landdroos/Magistrate

OPMERKINGS.—1. Artikel 16 (3) van die Wet bepaal dat indien die Landdroos nie in staat is om enige van die bevindings hierbo NOTE.—1. Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above he shall vermeld aan te teken nie, hy dié feit moet boekstaaf. record that fact. 2. Wanneer die notule van verrigtinge ingevolge artikel 18 (1) van die Wet aan 'n regter voorgelê word, word die prosedure voorgeskryf in paragraaf 12 van die Kode Geregte Like Doodsondersoeke gevolg. When the record of proceedings is submitted to a judge in terms of section 18 (1) of the Act, the procedure prescribed in paragraph 12 of the code "Geregte Like Doodsondersoeke" should be followed.

DIE PROKUREUR-GENERAAL THE ATTORNEY-GENERAL DIRECTOR OF PUBLIC PROSECUTIONS GRAHAMSTOWN

Ingevolge artikel 17 (1) van die Wet op Geregte Like Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van verrigtinge In terms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings. hiermee voorgelê.

Datum 18.2.2004 (SGD) N. MJEKULA Landdroos/Magistrate

Die stukke gaan hiermee terug vir lissering. My verwysingsnommer is 9/2/9- 115/04 The record is returned herewith for filing. My reference number is 9/2/9- 115/04 PUBLIC PROSECUTIONS

GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959
INQUEST: ACT 58 OF 1959

Gehou te Held at KING WILLIAM'S TOWN In die in the KING WILLIAM'S TOWN

\*afdeling van die Hooggeregshof van Suid-Afrika/streekafdeling/distrik
\*division of the High Court of South Africa/regional division/district

voor by N MJEKULA \*regter/streeklanddros/landdros
\*judge/regional magistrate/magistrate

van genoemde \*afdeling/streekafdeling distrik met as assessor(e)
of the said \*division/regional division/district with (i) (ii) as assessor(s)

op (datum) 17.2.2004 aangaande die omstandighede in verband met die dood van ondergenoemde persoon.
(date) into the circumstances attending the death of the person mentioned below.



bevindings ingevolge artikel 16 van die Wet:
findings in terms of section 16 of the Act:

(a) Identiteit van die oorledene IAN WHEELWRIGHT MACDONALD
Identity of the deceased person

MALE 61 years
(Meld volle naam, identiteitsnommer of ouderdom en geslag • State full name, identity number or age and sex)

(b) Datum van sterfgeval 28 NOVEMBER 1992
Date of death

(c) Oorsaak of waarskynlike oorsaak van dood MULTIPLE WOUNDS ON BODY
Cause or likely cause of death

(d) Of die dood veroorsaak is deur 'n handeling of versuim wat prima facie 'n misdryf aan die kant van iemand insluit of uitmaak:
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:

DEATH BROUGHT ABOUT BY AN ACT AMOUNTING TO AN OFFENCE ON THE PART OF
THEMBELANI XUNDU, MALUSI MORRISON, LUNGIS'UMZIWONKE NTINTILE & TOBELA
MLAMBISA

Datum 17.2.2004 (SGD) N MJEKULA
Date Regterlike Beampte • Judicial Officer

OPMERKINGS: 1. Artikel 16 (3) van die Wet bepaal dat indien die regterlike beampte nie in staat is om enige van die bevindings hierbo
NOTE: 1. Section 16 (3) of the Act provides that if the judicial officer is unable to record any of the findings set out above he shall record
vermeld aan te teken, hy dié feit moet boekstaaf.
that fact.

\*2. Wanneer die notule van verrigtinge ingevolge artikel 18 (1) van die Wet aan die hof of 'n regter daarvan voorgelê word, word die
\*2. When the record of proceedings is submitted to the court or a judge thereof in terms of section 18 (1) of the Act, the procedure
prosedure voorgeskryf in paragraaf 12 van die kode "Geregteelike Doodsondersoeke" gevolg.
prescribed in paragraph 12 of the code "Geregteelike Doodsondersoeke" should be followed.

DIREKTEUR VAN OPENBARE VERVOLGINGS
DIRECTOR OF PUBLIC PROSECUTIONS
GRAHAMSTOWN

Ingevolge artikel 17 (1) van die Wet op Geregteelike Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van verrigtinge hiermee voorgelê.
In terms of section 17(1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.

Datum 17.2.2004 (SGD) N MJEKULA
Date Regterlike Beampte • Judicial Officer

Die stukke gaan hiermee terug vir klassering. My verwysingsnommer is 9/2/9-110/04 113/04
The record is returned herewith for filing. My reference number is

Die Direkteur: Openbare Vervolgings het besluit om te vervolg/om nie te vervolg nie.
The Director: Public Prosecutions has decided to prosecute/not to prosecute.

VEILIGE HEIDSTAK

JOHANNESBURG

G.P.-S. 003-0033

J 56

No. 1919 / 19 19

GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959  
INQUEST: ACT 58 OF 1959

Gehou te Held at **JOHANNESBURG** in die distrik in the district of **JOHANNESBURG**

voor by **M. K. S. DE LANGE** Landdros van genoemde distrik en Magistrate for the said district

met with as assessor(e) op die as assessor(s) on the dag day

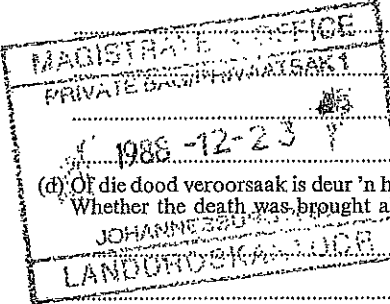
van of **1988-12-08** 19... aangaande die omstandighede in verband met die dood van ondergenoemde persoon. into the circumstances attending the death of the person mentioned below.

Bevindings ingevolge artikel 16 van die Wet: Findings in terms of section 16 of the Act:

(a) Identiteit van die oorledene Identity of the deceased person **CLIVE WINSTON D HAYLE**  
**CLUCAS WIMALLE; 47 YRS**  
(Meid volle naam, ras, geslag, ouderdom en beroep/State full name, race, sex, age and occupation)

(b) Datum van sterfgeval Date of death **2/7/88**

(c) Oorsaak of waarskynlike oorsaak van dood Cause or likely cause of death **MULTIPLE INJURIES**  
**Car bomb explosion**



(d) Of die dood veroorsaak is deur 'n handeling of versuim, wat 'n misdryf aan die kant van iemand insluit of uitmaak Whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person

**Person unknown**

Datum Date **1988-12-08**

*[Signature]*  
Landdros/Magistrate

OPMERKINGS.—1. Artikel 16 (3) van die Wet bepaal dat indien die Landdros nie in staat is om enige van die bevindings hierbo vermeld aan te teken nie, hy dié feit moet boekstaaf.  
NOTE.—1. Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above he shall record that fact.

2. Wanneer die notule van verrigtinge ingevolge artikel 18 (1) van die Wet aan 'n regter voorgelê word, word die prosedure voorgeskryf in paragraaf 12 van die Kode Geregteelike Doodsondersoeke gevolg.  
When the record of proceedings is submitted to a judge in terms of section 18 (1) of the Act, the procedure prescribed in paragraph 12 of the code "Geregteelike Doodsondersoeke" should be followed.

DIE PROKUREUR-GENERAAL THE ATTORNEY-GENERAL **JOHANNESBURG**

Ingevolge artikel 17 (1) van die Wet op Geregteelike Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van verrigtinge hiermee voorgelê.  
In terms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.

Datum Date **1988-12-08**

*[Signature]*  
Landdros/Magistrate

Die stukke gaan hiermee terug vir liassering. My verwysingsnommer is The record is returned herewith for filing. My reference number is

**11712/2682/88**  
1504

WETLIKHEIDS TAFEL  
JOHANNESBURG

137

J 56

No. 14461/19

GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959  
INQUEST: ACT 58 OF 1959

Gehou te Held at **JOHANNESBURG** in die distrik in the district of **JOHANNESBURG**

voor by **MARCELO LANGE** Landdros van genoemde distrik en Magistrate for the said district

met with **1959-12-08** as assessor(e) op die as assessor(s) on the **dag day**

van of **19** aangaande die omstandighede in verband met die dood van ondergenoemde persoon. into the circumstances attending the death of the person mentioned below.

Bevindings ingevolge artikel 16 van die Wet: Findings in terms of section 16 of the Act:

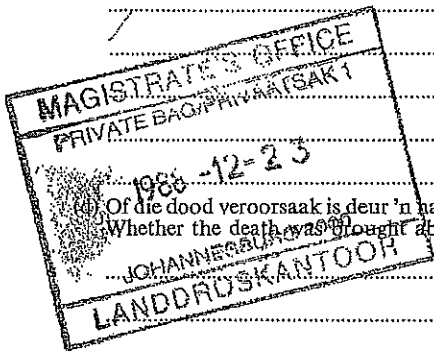
(a) Identiteit van die oorledene Identity of the deceased person **LIMUS MARE ; W / MALE**

(Meld volle naam, ras, geslag, ouderdom en beroep/State full name, race, sex, age and occupation)

(b) Datum van sterfgeval Date of death **2/7/88**

(c) Oorsaak of waarskynlike oorsaak van dood Cause or likely cause of death **MULTIPLE INJURIES**

**Carbon copy**



Of die dood veroorsaak is deur 'n handeling of versuim, wat 'n misdryf aan die kant van iemand insluit of uitmaak Whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person

Datum Date **1959-12-08** Landdros/Magistrate

OPMERKINGS.—1. Artikel 16 (3) van die Wet bepaal dat indien die Landdros nie in staat is om enige van die bevindings hierbo vermeld aan te teken nie, hy dié feit moet boekstaaf. NOTE.—1. Section 16 (3) of the Act provides that if the Magistrate is unable to record any of the findings set out above he shall record that fact.

2. Wanneer die notule van verrigtinge ingevolge artikel 18 (1) van die Wet aan 'n regter voorgelê word, word die prosedure voorgeskryf in paragraaf 12 van die Kode GeregteLIKE Doodsondersoeke gevolg. When the record of proceedings is submitted to a judge in terms of section 18 (1) of the Act, the procedure prescribed in paragraph 12 of the code "GeregteLIKE Doodsondersoeke" should be followed.

DIE PROKUREUR-GENERAAL THE ATTORNEY-GENERAL

**JOHANNESBURG**

Ingevolge artikel 17 (1) van die Wet op GeregteLIKE Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van verrigtinge hiermee voorgelê. In terms of section 17 (1) of the Inquests Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.

Datum Date **1959-12-08** Landdros/Magistrate

Die stukke gaan hiermee terug vir liassering. My verwysingsnommer is The record is returned herewith for filing. My reference number is **1192127/2/88**

Datum Date **22.12.88** Hoofklerk van die Prokureur-generaal Chief Clerk to the Attorney-General

GEREGTELIKE DOODSONDERSOEK: WET 58 VAN 1959  
INQUEST: ACT 58 OF 1959

hou te held at FORT BEAUFORT in die in the FORT BEAUFORT

\*afdeling van die Hooggeregshof van Suid-Afrika/streekafdeling/  
\*division of the Supreme Court of South Africa/regional division/

distrik voor JP JAQUIRE \*regter/streeklanddree/  
district by ..... \*judge/regional magistrate/

landdros van genoemde \*afdeling/streekafdeling distrik met GEEN as assessor(e) op die 11 dag  
magistrate of the said \*division/regional division/district with ..... as assessor(s) on the ..... day

van DESEMBER 2003 aangaande die omstandighede in verband met die dood van ondergenoemde persoon.  
of ..... 19 into the circumstances attending the death of the person mentioned below.

Bevindings ingevolge artikel 16 van die Wet:  
Findings in terms of section 16 of the Act:

(a) Identiteit van die oorledene JOHANNES FREDERICK JERLING  
Identity of the deceased person.....

18 JAAR, MANLIK

(Meld volle naam, identiteitsnommer of ouderdom en geslag • State full name, identity number or age and sex)

(b) Datum van sterfgeval 20/03/1993  
Date of death.....

(c) Oorsaak of waarskynlike oorsaak van dood SKIETWOND IN KOP NADAT OORLEDENE IN 'N AANVAL  
Cause or likely cause of death.....  
DEUR APLA OP DIE YELLOWWOODS HOTEL GESKIET IS.

In

(d) Of die dood veroorsaak is deur 'n handeling of versuim wat prima facie 'n misdryf aan die kant van iemand insluit of uitmaak:  
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:

JA. NKOPANE, DIABO-MONAHENG, VUYISILE BRIAN MADASI EN LUNGISA MZIWONKE NTINTILI

Datum 11 DESEMBER 2003  
Date.....

Regterlike Beampte • Judicial Officer

OPMERKINGS.-1. Artikel 16 (3) van die Wet bepaal dat indien die regterlike beampte nie in staat is om enige van die bevindings hierbo vermeld aan te teken, hy dié feit moet boekstaaf.  
NOTE.-1. Section 16 (3) of the Act provides that if the judicial officer is unable to record any of the findings set out above he shall record that fact.

\*2. Wanneer die notule van verrigtinge ingevolge artikel 18 (1) van die Wet aan die hof of 'n regter daarvan voorgelê word, word die prosedure voorgeskryf in paragraaf 12 van die kode "Geregtelike Doodsondersoeke" gevolg.  
\*2. When the record of proceedings is submitted to the court or a judge thereof in terms of section 18 (1) of the Act, the procedure prescribed in paragraph 12 of the code "Geregtelike Doodsondersoeke" should be followed.

DIE PROKUREUR-GENERAAL DIREKTEUR OPENBARE VERVOLGINGS  
THE ATTORNEY-GENERAL PRIVAATSAK X1009, GRAHAMSTAD, 6140

Ingevolge artikel 17 (1) van die Wet op Geregtelike Doodsondersoeke, 1959 (Wet 58 van 1959), word die notule van verrigtinge hiermee voorgelê.  
In terms of section 17(1) of the Inquest Act, 1959 (Act 58 of 1959), I submit herewith the record of proceedings.

Datum 11 DESEMBER 2003  
Date.....

Regterlike Beampte • Judicial Officer

Die stukke gaan hiermee terug vir lasserling. My verwysingsnommer is SV 64/95. 9/2/9 - 980/02  
The record is returned herewith for filing. My reference number is .....

Die Prokureur-generaal het besluit om te vervolg/om nie te vervolg nie/dat die polisie ondersoek moet voortgaan.  
The Attorney-General has decided to prosecute/not to prosecute/ that police investigation is to continue.

Datum 2003-12-23  
Date.....

GRAHAMSTOWN

Hoofklerk van die Prokureur-Generaal  
Chief Clerk to the Attorney-General

\* Skrap indien nie van toepassing.

Sims

VERSKYNNINGS INGEVOLGE ARTIKEL 11 VAN DIE WET  
APPEARANCES IN TERMS OF SECTION 11 OF THE ACT

As Staatsaanklaer MR. M. RUSI  
As Public Prosecutor .....

en NO-ONE namens  
and .....on behalf of

Die volgende beëdigde/bevestigende verklaring is ingevolge artikel 13 (1) van die Wet toegelaat:  
The following affidavits/affirmations were admitted in terms of section 13(1) of the Act:

- A - CLYDE CONWAY SCHWARTZ
- B - HENRY SHANE FERREIRA
- C - JAN JOHANNES NEL
- D - HENDRIK JACOBUS STEPHANUS RAUTENBACH
- E - CHARL JACQUES HURN
- F - KHAYALETHU EVERTON KEPEYI
- G - LANCE PIETER DE KLERK
- H - CHARL JACQUES HURN
- J - JOHANNES PETRUS JACOBUS ERASMUS
- K - DR. BASIL WINGREEN
- L - FREDERICK JACOBUS PETRUS NEL
- L2 Kennisgewing van vrywaring deur Warheid en Versoenings Kommissie
- L3 Beslissing van vrywaringskommissie
- L4 Proklamasie interne van artikel 20(1) Wet 34/1995

Die volgende mondelinge getuienis is afgeleë:  
The following oral evidence was adduced:

GEEN

Office of the Head  
Priority Crimes Litigation Unit  
VGM Building  
PRETORIA

/Z56 forms

P. O. Box 752,  
PRETORIA  
0001

VGM Building  
Hartley St.  
Weavind Park  
0001  
Pretoria  
South Africa

Tel: (012) 845 6431  
Cell: 082 498 6033

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## INTERNAL MEMORANDUM

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**TO:** ADV VP PIKOLI  
NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS

**CC:** MS KALYANI PILLAY  
SPECIAL DIRECTOR OF PUBLIC PROSECUTIONS

**CC:** DR MS RAMAITE SC  
DEPUTY NATIONAL DIRECTOR OF PUBLIC  
PROSECUTIONS

**FROM:** ADV RC MACADAM  
DEPUTY DIRECTOR OF PUBLIC PROSECUTIONS  
AND DEPUTY HEAD: PCLU

**SUBJECT:** TRC MATTERS

**DATE:** 16 AUGUST 2007

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Dear Adv Pikoli

1. Anton has asked me to deal with this matter after he in turn had discussed it with Dr Ramaite SC.
2. I attach herewith the fax from AfriForum, as well as a draft reply for your consideration.
3. This is the following episode in the saga of the so-called case against the President and other senior ANC leaders which has been the source of much controversy, since the President made his speech in April 2003 to the effect that there would be no further TRC amnesty processes.
4. As in the case of all previous complaints, AfriForum refuses to

produce the "evidence" upon which it makes its allegations.

5. When the allegations of a so-called case against the President first surfaced, I went through a large number of dockets at the DPP: Pretoria's office, which had been compiled by the former Security Branch of the then SAP. I also held detailed discussions with the two SAPS members, who were in charge of such dockets. I could find no evidence implicating the President or any other senior ANC member. In all the dockets, the implicated parties had received amnesty and no further prosecution of them was therefore legally justified.
6. With the assistance of Madeleine Fullard, I went through the following TRC material:
  - 6.1 A submission by the former Security Force Generals directed against MK. None of the current parties were implicated during the course of such submission.
  - 6.2 A submission by the President in his capacity as the Head of the ANC during the course of which it was admitted that human rights abusers were committed during the course of the Liberation Struggle. This submission was not an admission of personal liability and in any event, in terms of the TRC legislation, statements of this nature are not admissible as confessions in criminal proceedings.
  - 6.3 Amnesty applications by former MK operatives with particular reference to the land mine campaign. In certain instances, these applications were opposed by the lawyers acting on behalf of the Generals (In this case, claiming to have a mandate from the victims). Again, the current parties were not implicated and in any event, the TRC granted amnesty on the basis that a full disclosure had been made.
  - 6.4 The refusal of amnesty to a group referred to collectively as the "ANC 37". The basis of the refusal was that collective political responsibility had been assumed without admission of individual criminal acts. Since the TRC was only empowered to grant amnesty for criminal offences, the applications had to be refused.
7. The security laws which applied in the 1970/1980's contained several presumptions aimed at easing the burden on the State to prove individual criminal acts. These laws have all been repealed and consequently, guilt must be determined on the basis of the general principles of common purpose. Common purpose as interpreted by the Courts requires either direct participation in the offence or a prior agreement to commit it. The relevant acts must be committed either prior to or during the commission of the offence.
8. In the light of the above, I was of the view that there was no admissible evidence upon which to investigate or prosecute the ANC leadership and I submitted a memorandum to Mr Ngcuka to this effect. Subsequently, the NPA released a media statement to the effect that no grounds existed to investigate or prosecute the ANC leadership.
9. Mr Ngcuka also requested me to brief Minister Maduna and members of the Office of the President and all parties were satisfied.
10. It is highly likely that your reply will be released to the media by Mr Kriel and I therefore deem it inappropriate to request him to make his investigation available, as this might create the

impression that there is in fact a case against the ANC leadership and we will have a repeat of the problems where senior Government officials believed that we were planning to arrest the President and other persons.

Kind regards

---

**RC MACADAM**

17 August 2007

The CEO  
AfriForum  
Pretoria  
0001

Fax: (012) 6641281  
Email: [kallie@afriforum.co.za](mailto:kallie@afriforum.co.za)

Dear Mr Kriel

**YOUR COMPLAINT RE TRC MATTERS**

I acknowledge receipt of your letter dated 27 July 2007 and have to inform you that in 2004, my predecessor, Adv Bulelani Ngcuka, declined to prosecute the leadership of the ANC in respect of various matters arising from the TRC process. This decision was taken after careful consideration of all the available, admissible evidential material and in the light of the Constitutional powers and policy of the National Prosecuting Authority. His decision was publicly announced to the media. A copy of the media release is attached herewith for easy reference.

In essence, the facts upon which you based your allegations against the ANC leadership, formed part of the evidential material, which was considered by Adv Ngcuka. I note in your letter that you have declined to make your private investigation available to me. I therefore have no legal basis upon which to overturn the properly informed and carefully considered decision of my predecessor.

I wish to inform you that all prosecutions arising from the TRC process are in accordance with the prosecution policy as required by the Constitution. I therefore cannot accede to your further request to cease all prosecutions arising from the TRC cases.


Yours sincerely

---

**ADV VP PIKOLI**  
**NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**

- 2.6 With the aforementioned in mind, my clients will now have to liaise with the investigating officer of this specific incident and Adv. Ackermann SC and guide them regarding the evidence and witnesses from whom further affidavits should be obtained. (Which should have been done in the first place). Thereafter, if necessary, Adv. Ackermann SC will be requested to utilise his powers in terms of Section 204 and 205 of the Criminal Procedure Act, to wrap up outstanding evidential issues and then, so we believe, a prosecution will follow.
  - 2.7 Should the unthinkable happen and the NPA at that stage still decide not to prosecute, my clients may have no alternative than to institute private prosecutions. We trust, however, that this will not happen and that you will respect the said constitutional principles.
3. I will keep you informed of progress herein.

Yours faithfully



J WAGENER  
FOR: WAGENER MULLER

**MEDIA STATEMENT BY THE NATIONAL  
DIRECTOR OF PUBLIC PROSECUTIONS**

***S v JOHANNES VELDE VAN DER MERWE & 4 OTHERS***

---

I confirm that on 17 August 2007 and at the Pretoria High Court, in accordance with a Plea and Sentence Agreement in terms of Section 105A of Act 51 of 1977, JOHANNES VELDE VAN DER MERWE, ADRIAAN JOHANNES VLOK, CHRISTOFFEL LODEWIKUS SMITH, GERT JACOBUS LOUIS HOSEA OTTO and HERMANUS JOHANNES VAN STADEN pleaded guilty to a charge of attempted murder, relating to an attempt to poison Reverend Frank Chikane and that the accused were sentenced as follows:

Johannes Velde Van Der Merwe & Adriaan Johannes Vlok

**10 years imprisonment, wholly suspended for 5 years**

Christoffel Lodewikus Smith, Gert Jacobus Louis Hosea Otto and Hermanus Johannes Van Staden

**5 years imprisonment, wholly suspended for 5 years**

In arriving at the decision to prosecute the accused in this matter, I have acted in accordance with both the Constitution and the law.

This case has been conducted in terms of the Prosecution Policy, as amended and is in full compliance with Section 179(5) of our Constitution, which empowers the National Director to determine prosecution policy with the concurrence of the Cabinet member responsible for the administration of justice, and after consulting the Directors of Public Prosecution. It is important to note that each of the TRC cases before the NPA will be dealt with on its own merits. The National Prosecuting Authority expresses its satisfaction with the co-operation it has received from the victim/complainant, the accused and the defence team in resolving this grave matter which is of national and international significance.

In dealing with all of these cases, I will at all times be guided by the Constitution and the law, in particular the preamble to the Constitution, "Heal the divisions of the past and establish a society based on democratic values, social justice and fundamental rights".

This case is a victory for the Rule of Law for the State, the National Prosecuting Authority as well as the South African public at large and is in line with the 4 pillars from which the National Prosecuting Authority derives its strength, viz.:

- Independence
- Accountability
- Integrity and
- Transparency

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**ADV VP PIKOLI**  
**NATIONAL DIRECTOR OF PUBLIC PROSECUTIONS**